

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

**Master File No. 1:00 - 1898
MDL 1358 (SAS)
M21-88**

This Document Relates to:

*New Jersey Department of Environmental
Protection, et al. v. Atlantic Richfield Co., et al.*
No. 1:08-cv-00312-SAS

**DECLARATION OF MICHAEL AXLINE IN SUPPORT PLAINTIFFS' OPPOSITION
TO THE THIRD PARTIES' MOTION FOR SUMMARY JUDGMENT**

I, Michael Axline, declare:

1. I am one of the attorneys in this case for Plaintiff New Jersey Department of Environmental Protection. I have been involved in the discovery and pretrial proceedings in this action. This Declaration is based on my personal knowledge and, if called as a witness, I could testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition transcript of Robert Melecci, taken in the above-referenced matter, dated September 12, 2012.

3. Attached hereto as Exhibit 2 is a true and correct copy of a letter from Anthony P. Ambrosio to Stuart J. Lieberman re: Gasoline Spill, dated January 22, 2007, and a letter in response from Dhandi Transport's attorney, Gary S. Pasricha, dated February 2, 2007.

4. Attached hereto as Exhibit 3 is a true and correct copy of an email from Mark Herzberg to Valeri Morone re: HP Delta/Rob's Service Station, dated January 23, 2007.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the Aquilogic, Inc. Revised Site Summary for HP Delta Service Station, dated January 2013.

6. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Anthony P. Ambrosio to Gurmail Singh, of HP Delta, re: Gasoline Spill, dated August 28, 2006 and a letter in response from H.P. Delta's attorney, Shari M. Blecher, re: DEP Enforcement Action, dated September 5, 2006.

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the deposition transcript of Gary S. Lipsius, regarding HP Delta, taken in the above-referenced matter, dated August 2, 2012.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the deposition transcript of Akshay Parikh regarding HP Delta, taken in the above-referenced matter, dated September 11, 2012.

9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the deposition transcript of Anthony Brown, taken in the above-referenced matter, dated May 28, 2013.

10. Attached hereto as Exhibit 9 is a true and correct copy of a letter from Charles L. Maack to Robert Melecci and Harbans Singh re: Administrative Order and Notice of Civil Administrative Penalty Assessment, dated April 30, 2007.

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from Defendant Getty Properties Corp.'s Answers and Objections to Plaintiffs' First Set of Requests for Admissions, dated October 15, 2012.

12. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from Triassic Technology Inc.'s Expert Report on the Source and Age of Subsurface Gasoline Contamination at the Delta Gas Service Station Site in Colonia, New Jersey, dated December 14, 2010.

13. Attached hereto as Exhibit 12 is a true and correct copy of an Administrative Order from the State of New Jersey Department of Environmental Protection in the Matter of Getty Petroleum Inc., dated December 15, 1987.

14. Attached hereto as Exhibit 13 is a true and correct copy of excerpts from HCR's Annual Site Update Report re: HP Delta, dated March 2010.

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the deposition transcript of Mehar Singh, taken in the above-referenced matter, dated August 1, 2012.

16. Attached hereto as Exhibit 15 is a true and correct copy of a letter from Kevin F. Kratina to Harbans Singh re: Notice of Rejection of Site Investigation Report dated December 7, 2006 regarding HP Delta, Inc., dated February 28, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of January, 2014 at Sacramento, California.

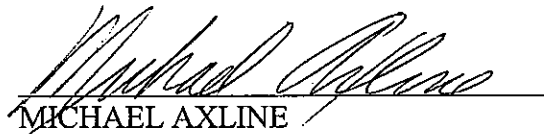

MICHAEL AXLINE

EXHIBIT 1

ROBERT MELECCI

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 08 CIV 312 (SAS)
MDL 1358

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NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	
et al.	:	Videotaped
	:	Deposition of:
Plaintiffs,	:	ROBERT MELECCI
against	:	
ATLANTIC RICHFIELD CO.,	:	
et al.,	:	
Defendants.	:	

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TRANSCRIPT of testimony as taken by and before
NANCY C. BENDISH, Certified Court Reporter, RMR, CRR
and Notary Public of the States of New Jersey and
New York, at the offices of LEARY, BRIDE, TINKER &
MORAN, 7 Ridgedale Avenue, Cedar Knolls, New Jersey
on Wednesday, September 12, 2012, commencing at
10:25 a.m.

ROBERT MELECCI

Page 18	Page 20
<p>1 A. Yeah.</p> <p>2 Q. -- what did you -- was it just a car</p> <p>3 repair -- was it a car repair place?</p> <p>4 A. Car repair and gas station.</p> <p>5 Q. And did you purchase it in 19 -- did</p> <p>6 you purchase the parcel of property in 1983?</p> <p>7 A. Yes.</p> <p>8 Q. And who did you purchase it from?</p> <p>9 A. Lino Silva.</p> <p>10 Q. Lina?</p> <p>11 A. Lino.</p> <p>12 Q. Lino. Silva?</p> <p>13 A. Yes.</p> <p>14 Q. When you operated -- and when you</p> <p>15 purchased in 1983 was it already a gas station?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know how long they were in</p> <p>18 operation prior to your purchasing there?</p> <p>19 A. No.</p> <p>20 Q. Okay. When you operated it from --</p> <p>21 Rob's Service Center from 1983 to 2004, during that</p> <p>22 whole time period did you operate it as a gas</p> <p>23 station and an automotive repair?</p> <p>24 A. Yes.</p> <p>25 Q. And from 1983 to 2004 was it always</p>	<p>1 was when I bought the property.</p> <p>2 Q. And did it have the Getty sign</p> <p>3 outside?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. But you called it Rob's</p> <p>6 Service Center?</p> <p>7 A. Yes.</p> <p>8 Q. But it was referred to as a Getty</p> <p>9 station or Rob's -- in terms of -- did you advertise</p> <p>10 your station at all?</p> <p>11 A. As Rob's Service Center.</p> <p>12 Q. As Rob's Service Center?</p> <p>13 A. Yes.</p> <p>14 Q. But there was a Getty sign outside?</p> <p>15 A. Yes.</p> <p>16 Q. Was the operation of the gasoline,</p> <p>17 the selling of the gasoline separate from the</p> <p>18 automotive repair?</p> <p>19 A. Yes.</p> <p>20 Q. Was the automotive repair referred to</p> <p>21 as Rob's Service Center?</p> <p>22 A. Yes.</p> <p>23 Q. And was the gasoline station referred</p> <p>24 to as Getty?</p> <p>25 A. You want Getty gas, it's Getty gas.</p>
Page 19	Page 21
<p>1 referred to as Rob's Service Center?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know the name of the gas</p> <p>4 station prior to 1983?</p> <p>5 A. Getty.</p> <p>6 Q. And do you know how long it was named</p> <p>7 Getty prior to 1983?</p> <p>8 A. No.</p> <p>9 Q. And then when you purchased it, was</p> <p>10 there any -- when you purchased it in 1983, did you</p> <p>11 sell -- from 1983 to 2004, did you sell gasoline?</p> <p>12 A. Yes.</p> <p>13 Q. And was there a -- was there a</p> <p>14 particular brand of gasoline that you sold during</p> <p>15 that time period?</p> <p>16 A. Sold Getty gas, sold Texaco gas, sold</p> <p>17 BP gas, and CITGO.</p> <p>18 Q. Okay. What years, do you recall what</p> <p>19 years you sold Getty gas?</p> <p>20 A. Up to the beginning of '90 -- of '87.</p> <p>21 Q. So you sold Getty gas from 1983 --</p> <p>22 A. '83 to the beginning of '87.</p> <p>23 Q. Did you have a branding agreement</p> <p>24 with Getty?</p> <p>25 A. I just took over the contract that it</p>	<p>1 Q. Well, did you have the Getty sign out</p> <p>2 front?</p> <p>3 A. Yes.</p> <p>4 Q. And on the dispensers for gasoline,</p> <p>5 did they say Getty?</p> <p>6 A. Yes.</p> <p>7 Q. And since you were selling gasoline</p> <p>8 I'm assuming that there was some underground storage</p> <p>9 tanks?</p> <p>10 A. Yes.</p> <p>11 Q. Did they exist when you purchased the</p> <p>12 property?</p> <p>13 A. Yes.</p> <p>14 Q. And prior to purchasing the property,</p> <p>15 did you have those underground storage tanks</p> <p>16 inspected?</p> <p>17 A. No.</p> <p>18 Q. Did you ask for any documents with</p> <p>19 regards to the underground storage tanks when you</p> <p>20 purchased the property?</p> <p>21 A. Not that I remember.</p> <p>22 Q. So when you purchased the gas</p> <p>23 station, did you also purchase the underground</p> <p>24 storage tanks?</p> <p>25 A. Well, Getty owned the tanks at the</p>

6 (Pages 18 to 21)

ROBERT MELECCI

Page 94	Page 96
1 Q. What other carriers; do you recall?	1 underground storage -- or deliver gasoline to the
2 A. Jersey Gasoline.	2 underground storage tank or at the conclusion of it?
3 Q. And do you recall the time frame,	3 MR. BRIGHT: Objection to form.
4 about what year?	4 A. I couldn't tell you.
5 A. No.	5 Q. On how many occasions did you witness
6 Q. When you witnessed Dhandi Transport	6 them spilling, Dhandi Transport gas spilling
7 deliver gasoline, did you ever witness spills of	7 gasoline?
8 gasoline?	8 A. A few.
9 A. Yes.	9 Q. Do you recall the dates?
10 Q. Describe the spill; how would it	10 A. No.
11 spill?	11 Q. By a few do you mean three times over
12 MR. BRIGHT: Objection to form.	12 the last -- since 2003, or more often?
13 MR. SINKEVICH: Join.	13 A. No, I'd say a few more.
14 Q. Can you describe to me what you	14 Q. A few more than a few?
15 witnessed when you said you witnessed a spill?	15 A. Yes.
16 A. Just seen gas.	16 Q. So, would that be six, nine?
17 Q. Well, I understand that, but --	17 A. Yes.
18 A. Spill.	18 Q. Six times?
19 Q. Was it spilling out of the truck?	19 A. Yeah.
20 A. No.	20 Q. Is that six times a year or is that
21 Q. Was it spilling out of the hose from	21 six times total?
22 the truck?	22 A. Six total, I don't know.
23 A. Yes.	23 MR. MOONEY: Take a break.
24 Q. Was it -- the truck would hook up --	24 THE VIDEOGRAPHER: This is the end of
25 when the truck arrived it would hook up the hose to	25 tape number 1, the time is 12:39 p.m. and we are
Page 95	Page 97
1 the truck and then to the underground storage tank?	1 going off the record.
2 A. Yes.	2 (Recess taken.)
3 Q. And then it was during that process	3 THE VIDEOGRAPHER: This begins tape
4 that you, during that delivery of gasoline to the	4 number 2, the time is 12:43 p.m. and we are now back
5 underground storage tank, that you would see spills	5 on the record.
6 of gasoline?	6 BY MR. MOONEY:
7 A. Yes.	7 Q. Mr. Melecci, you said that over the
8 MR. BRIGHT: Objection, form.	8 course of time that Dhandi, that you witnessed them
9 Q. And what end of the hose would you	9 maybe about six times spill gasoline; is that
10 see spillage of gasoline?	10 correct?
11 MR. BRIGHT: Objection, form.	11 A. Yes.
12 Q. Would you see the part that's	12 Q. Do you recall testifying in a
13 connected to the truck or the part that's connected	13 previous deposition when asked, did you ever -- of
14 to the underground storage tank?	14 spilling gas when they dispensed from the trailer to
15 MR. BRIGHT: Same objection.	15 the ground, there was a question: Did you ever see,
16 A. Ummm.	16 in reference to Dhandi Transport, did you ever see
17 Q. You don't know?	17 them spilling gas, you testified yes and they asked
18 A. Am I supposed to answer?	18 the question of how often and you stated, every
19 Q. Yes.	19 time?
20 MR. BRIDE: If you can.	20 MR. BRIGHT: Objection to form.
21 A. To the tank.	21 Q. Do you recall that testimony?
22 Q. The part that's to the tank?	22 A. I don't know every time. But yes.
23 A. Yes.	23 Q. You recall testifying that --
24 Q. And would it be at the beginning of	24 A. Yes.
25 when they were starting to pump gasoline into the	25 Q. They spilled gas every time?

25 (Pages 94 to 97)

ROBERT MELECCI

Page 102	Page 104
<p>1 spills of gasoline?</p> <p>2 A. Yes.</p> <p>3 Q. What did you do?</p> <p>4 A. I let him know that he's got to take</p> <p>5 care of it.</p> <p>6 Q. And so did they take care of it?</p> <p>7 A. He spoke to -- I guess he spoke to</p> <p>8 the owner.</p> <p>9 Q. The owner being Gurmail Singh?</p> <p>10 A. I spoke to Gurmail.</p> <p>11 Q. You spoke to Gurmail?</p> <p>12 A. He took care of it from there.</p> <p>13 Q. And what -- to your knowledge what</p> <p>14 did Mr. Singh do?</p> <p>15 A. I have no clue.</p> <p>16 Q. Did you ever follow up to make</p> <p>17 sure he --</p> <p>18 A. No.</p> <p>19 Q. -- that he took care of it?</p> <p>20 A. No.</p> <p>21 Q. How many times did you talk to</p> <p>22 Mr. Singh?</p> <p>23 A. I couldn't tell you. Whenever I see</p> <p>24 him I talk. It's not necessarily on this; it's just</p> <p>25 other things.</p>	<p>1 is it concrete?</p> <p>2 A. Both.</p> <p>3 Q. And where would the liquid run off</p> <p>4 to?</p> <p>5 A. In dirt.</p> <p>6 Q. In dirt?</p> <p>7 A. Yeah. Grass.</p> <p>8 Q. And where would the liquid, the</p> <p>9 gasoline that you saw, this free product that you</p> <p>10 saw, where would it run off to?</p> <p>11 MR. BRIGHT: Objection to form.</p> <p>12 A. On the concrete and the blacktop.</p> <p>13 Q. Would just be absorbed into it?</p> <p>14 A. Would go in the cracks, yeah.</p> <p>15 Q. There's cracks in the concrete?</p> <p>16 A. Between the blacktop and the</p> <p>17 concrete.</p> <p>18 Q. Okay. Is there cracks in the</p> <p>19 concrete?</p> <p>20 A. No.</p> <p>21 Q. Is there cracks in the asphalt?</p> <p>22 A. No.</p> <p>23 Q. And how far away is the grass, would</p> <p>24 you say?</p> <p>25 A. Ten feet. Maybe.</p>
Page 103	Page 105
<p>1 Q. Did you ever, when you saw the Dhandi</p> <p>2 Transport spilling gasoline during their delivery,</p> <p>3 did you -- do you have an estimate as to how much</p> <p>4 gasoline was spilled?</p> <p>5 A. No.</p> <p>6 Q. Was it -- did it just run freely out</p> <p>7 of the end pipe?</p> <p>8 MR. BRIGHT: Objection to form.</p> <p>9 Q. I mean, can you -- describe to me</p> <p>10 what you --</p> <p>11 A. I just seen a stain on the ground.</p> <p>12 Q. Would you actually see liquid?</p> <p>13 A. Yes.</p> <p>14 Q. And the liquid was flowing out of the</p> <p>15 pipe from the tanker truck?</p> <p>16 A. No. I don't remember.</p> <p>17 Q. Were the --</p> <p>18 A. I seen a stain.</p> <p>19 Q. You seen a stain but you also saw</p> <p>20 liquid?</p> <p>21 A. Yes.</p> <p>22 Q. So would the liquid be kind of by</p> <p>23 where the underground storage tanks were?</p> <p>24 A. Yes.</p> <p>25 Q. What's the -- is it asphalt there or</p>	<p>1 Q. Would that product flow towards the</p> <p>2 grass?</p> <p>3 MR. BRIGHT: Objection, form.</p> <p>4 A. Yes.</p> <p>5 Q. Did you ever witness it flow towards</p> <p>6 the grass?</p> <p>7 A. No. I said I seen the stain.</p> <p>8 Q. The stain in the grass?</p> <p>9 A. Stain on the blacktop.</p> <p>10 Q. On the blacktop?</p> <p>11 A. Yes.</p> <p>12 Q. What does the stain look like?</p> <p>13 A. A stain. The way that you spilt the</p> <p>14 soda on your shirt.</p> <p>15 Q. So it's this color?</p> <p>16 A. Same kind.</p> <p>17 Q. Was it a brownish color?</p> <p>18 A. Yes.</p> <p>19 Q. How, did the tanks have an overflow</p> <p>20 bucket?</p> <p>21 A. Yes.</p> <p>22 Q. When Dhandi Transport would spill</p> <p>23 gasoline would it go into the overflow bucket?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall testifying that when</p>

27 (Pages 102 to 105)

ROBERT MELECCI

Page 138	Page 140
<p>1 State did in response to this access agreement?</p> <p>2 A. They took action, cleaning up my</p> <p>3 property.</p> <p>4 (Exhibit Melecci-21 marked for</p> <p>5 identification.)</p> <p>6 Q. 21 is MEL 0128 to 0137, a letter</p> <p>7 dated December 22nd, 2006 from Lieberman & Blecher</p> <p>8 to Anthony Ambrosio regarding 439 Lake Avenue,</p> <p>9 Colonia, Rob's Service Center.</p> <p>10 Do you ever recall seeing this letter</p> <p>11 before?</p> <p>12 A. I would imagine, yes.</p> <p>13 Q. In this letter attorneys for H.P.</p> <p>14 Delta are asserting that the source of the</p> <p>15 contamination is the old well field and very high</p> <p>16 levels of contamination exist and some levels exceed</p> <p>17 NJDEP clean-up thresholds.</p> <p>18 And then in the last sentence of the</p> <p>19 third paragraph, says, "Since the contamination</p> <p>20 occurred during your client's ownership of the</p> <p>21 property, you are jointly and severally liable for</p> <p>22 all costs and expenses relating to this</p> <p>23 contamination."</p> <p>24 Do you agree that the contamination</p> <p>25 occurred during your ownership of the property?</p>	<p>1 A. No.</p> <p>2 Q. Did you ever instruct your attorney</p> <p>3 to contact Getty?</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you know if your attorney ever</p> <p>6 contacted Getty?</p> <p>7 A. I don't recall.</p> <p>8 (Exhibit Melecci-22 marked for</p> <p>9 identification.)</p> <p>10 Q. 22 is MEL 0498 to 0499, and it is a</p> <p>11 letter dated January 22nd, 2007 from Anthony</p> <p>12 Ambrosio to Stuart Lieberman.</p> <p>13 Have you seen this letter before?</p> <p>14 A. Yes, I did.</p> <p>15 Q. When did you see this letter?</p> <p>16 A. January 22nd.</p> <p>17 Q. Your attorney provided you a copy of</p> <p>18 this letter?</p> <p>19 A. Yes, he did.</p> <p>20 Q. This letter states that -- says,</p> <p>21 "This letter is to advise you that on Wednesday,</p> <p>22 January 17th, 2007 my client, Robert Melecci, the</p> <p>23 owner of Rob's Towing Service, observed a delivery</p> <p>24 being made sometime in the afternoon by your</p> <p>25 client's gasoline transportation service. During</p>
Page 139	Page 141
<p>1 A. I couldn't answer that.</p> <p>2 Q. Hum?</p> <p>3 A. I can't answer that.</p> <p>4 Q. Can't answer that. Do you still own</p> <p>5 the property?</p> <p>6 A. Yes.</p> <p>7 Q. And do you own the property -- you</p> <p>8 began owning it in 1983?</p> <p>9 A. Yes.</p> <p>10 Q. So do you know if the contamination</p> <p>11 occurred during your ownership of the property?</p> <p>12 A. I couldn't tell you that. I bought</p> <p>13 it used.</p> <p>14 Q. You bought the property used?</p> <p>15 A. Yes.</p> <p>16 Q. Did you inspect the property -- did</p> <p>17 you have the property inspected before buying it?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Did you ever contact any of the</p> <p>20 previous owners of the property to --</p> <p>21 A. No one to ask. Deceased.</p> <p>22 Q. Okay. Did you contact their estate?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you ever contact Getty who</p> <p>25 previously owned the storage tanks?</p>	<p>1 the delivery gasoline spilled on the ground and</p> <p>2 pooled underneath the truck. Although the spill was</p> <p>3 cleaned up, clearly some of the gasoline seeped into</p> <p>4 the group." I'm assuming that should be ground; is</p> <p>5 that correct?</p> <p>6 A. On the ground, yes.</p> <p>7 Q. "This spill appears to be a</p> <p>8 recurrence of prior spills which may be the cause of</p> <p>9 the contamination now being investigated by the New</p> <p>10 Jersey Department of Environmental Protection."</p> <p>11 Can you explain to me, describe to me</p> <p>12 what you observed on January 17th, 2007?</p> <p>13 MR. BRIGHT: Objection to the form.</p> <p>14 A. Stain of gas underneath the truck.</p> <p>15 Q. It says "by your client's gasoline</p> <p>16 transportation delivery service." Do you know what</p> <p>17 company that was?</p> <p>18 A. That was Dhandi.</p> <p>19 Q. Dhandi Transport?</p> <p>20 A. Yeah. Dhandi, Dhondi.</p> <p>21 Q. Is that spelled D-h-a-n-d-i?</p> <p>22 A. I don't even know. D-i.</p> <p>23 Q. Says, "although the spill was cleaned</p> <p>24 up." Who cleaned up the spill?</p> <p>25 A. I guess it was the truck driver or</p>

36 (Pages 138 to 141)

ROBERT MELECCI

Page 198	Page 200
<p>1 A. They owned everything at the time.</p> <p>2 It shows you right there but I didn't even -- they</p> <p>3 never even said nothing about a waste oil tank.</p> <p>4 Q. So did you not know that was there</p> <p>5 when you bought the property?</p> <p>6 A. No, it was there because we were</p> <p>7 draining the oil in it, but never knowing that was</p> <p>8 part of Getty.</p> <p>9 Q. Oh, I see. So you knew it was there</p> <p>10 but you didn't know it was owned by Getty?</p> <p>11 A. Yeah, I just found out today that</p> <p>12 that was in the contract.</p> <p>13 Q. Okay.</p> <p>14 A. But I don't know why they didn't take</p> <p>15 it out then.</p> <p>16 Q. You testified earlier when you were</p> <p>17 asked about when Getty removed the tanks, the dirt</p> <p>18 that they took out of the ground...</p> <p>19 A. Um-hum.</p> <p>20 Q. I think you testified they stockpiled</p> <p>21 it on the site; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. You were asked if the soil, if the</p> <p>24 soil that had been removed, that pile had been</p> <p>25 covered.</p>	<p>1 A. I don't know.</p> <p>2 Q. How long did that soil sit --</p> <p>3 A. Over a year.</p> <p>4 Q. More than two years?</p> <p>5 A. Over a year.</p> <p>6 Q. So like a year and a few months?</p> <p>7 A. Yes. Because I couldn't put my tanks</p> <p>8 in until they moved the dirt.</p> <p>9 Q. All right. Now, regarding your</p> <p>10 testimony, which was a little bit confusing earlier,</p> <p>11 about how many times you saw Dhandi Transport spill</p> <p>12 fuel, I just want to -- I'm a little bit confused</p> <p>13 because you mentioned I think some type of a spill</p> <p>14 or maybe, I think you said six spills from when they</p> <p>15 were actually filling the tank but then later you</p> <p>16 referenced fuel coming out of a vent pipe.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So, am I correct in</p> <p>19 understanding your testimony today is that you</p> <p>20 witnessed approximately six times in which fuel was</p> <p>21 spilled by Dhandi while filling the tanks and then</p> <p>22 one additional time when you noticed it coming out</p> <p>23 the vent pipe?</p> <p>24 A. No, I seen it coming out of the vent</p> <p>25 pipe.</p>
Page 199	Page 201
<p>1 A. Yes.</p> <p>2 Q. I think you said it was, for the most</p> <p>3 part?</p> <p>4 A. Yeah, because the sun I guess was</p> <p>5 beating on the plastic, deteriorated, the weather.</p> <p>6 And they could come and cover it back and forth.</p> <p>7 Q. So the sun would deteriorate the</p> <p>8 cover they had on it?</p> <p>9 A. Yes. The weather, weather beating.</p> <p>10 Q. So there was a cover on it?</p> <p>11 A. Yes.</p> <p>12 Q. But the cover would periodically get</p> <p>13 ruined from the weather and they'd replace it?</p> <p>14 A. Yes.</p> <p>15 Q. What type of cover was it?</p> <p>16 A. Plastic.</p> <p>17 Q. Was the whole entire pile covered?</p> <p>18 A. No. They couldn't cover the whole</p> <p>19 pile.</p> <p>20 Q. What portion of it, roughly?</p> <p>21 A. Just the top. They gave it like a</p> <p>22 yamaka.</p> <p>23 Q. Just the top?</p> <p>24 A. Just the top.</p> <p>25 Q. Like the top 10 percent?</p>	<p>1 Q. Okay.</p> <p>2 A. Many times.</p> <p>3 Q. Is the first part of my statement</p> <p>4 correct regarding the number of times that you --</p> <p>5 A. No, because, like I say, I'm an</p> <p>6 absentee owner, in and out. But there's times I</p> <p>7 come in, I knew they got gas because I would see the</p> <p>8 spills. But there's times I was there and actually</p> <p>9 physically watched it.</p> <p>10 Q. Okay. And your testimony is you</p> <p>11 actually watched it six times; is that correct?</p> <p>12 A. Yeah, and told them -- well, not six</p> <p>13 times, I mean, goes three, goes six, goes nine. You</p> <p>14 give me a number, I give you a number.</p> <p>15 Q. Well, I understand it's approximate.</p> <p>16 A. Yeah, it's approximate.</p> <p>17 Q. But approximately six times; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, you're saying that you also</p> <p>21 observed instances in which you believe that fuel</p> <p>22 had been spilled because you noticed some type of</p> <p>23 staining on the ground, but you didn't actually</p> <p>24 witness the fuel being poured on the ground by</p> <p>25 Dhandi, correct?</p>

51 (Pages 198 to 201)

ROBERT MELECCI

Page 202	Page 204
<p>1 A. Yes.</p> <p>2 Q. Okay. And your belief that a fuel</p> <p>3 spill had occurred is based upon the fact that when</p> <p>4 you arrived at the site, you noticed a stain on the</p> <p>5 ground, correct?</p> <p>6 A. I asked the gas attendant and he told</p> <p>7 me who was here. He said it was the gas truck, and</p> <p>8 he said it was Dhandi.</p> <p>9 Q. So you noticed a stain on the ground,</p> <p>10 correct?</p> <p>11 A. Um-hum.</p> <p>12 Q. You asked the gas station attendant,</p> <p>13 right?</p> <p>14 A. Who was there, and I notified the</p> <p>15 tenant and told him. He would have it corrected.</p> <p>16 Q. My question to you is, in those</p> <p>17 instances in which you just observed the stain on</p> <p>18 the ground, how do you know that was gasoline you</p> <p>19 observed?</p> <p>20 A. It was.</p> <p>21 Q. How do you know that?</p> <p>22 A. Just the stain from where the fillers</p> <p>23 are is only -- is gas. It's not antifreeze or</p> <p>24 nothing like that, it's a gas stain. Because you go</p> <p>25 over there and you could put your finger in the</p>	<p>1 find out if they had a gas drop, and the truck was</p> <p>2 either just there or he was just leaving or</p> <p>3 whatever, but I would catch it.</p> <p>4 Q. So you would see a stain?</p> <p>5 A. Yes.</p> <p>6 Q. And you would find out that the truck</p> <p>7 had just been there?</p> <p>8 A. Yes.</p> <p>9 Q. And you would therefore assume that</p> <p>10 that was gas on the ground because of that?</p> <p>11 A. I knew it was gas. You could smell</p> <p>12 it.</p> <p>13 Q. Okay, you could smell it. How did</p> <p>14 you go about smelling it?</p> <p>15 A. The Lord gave me a nose and I smelt</p> <p>16 it.</p> <p>17 Q. I've got to believe that the whole</p> <p>18 area smells somewhat like gasoline because it's a</p> <p>19 gas station, right?</p> <p>20 A. Not necessarily.</p> <p>21 Q. There were approximately six</p> <p>22 instances in which you observed Dhandi people</p> <p>23 spilling gas while filling tanks, right?</p> <p>24 A. You're on that number six again, but</p> <p>25 go ahead.</p>
Page 203	Page 205
<p>1 blacktop.</p> <p>2 Q. What do you mean put your finger in</p> <p>3 the blacktop?</p> <p>4 A. It eats up the blacktop.</p> <p>5 Q. The gasoline --</p> <p>6 A. Yes.</p> <p>7 Q. -- eats up the blacktop?</p> <p>8 A. Yes, it does.</p> <p>9 Q. Okay. So, did you put your finger in</p> <p>10 it every time you observed it?</p> <p>11 A. Yes. Yes, I did.</p> <p>12 Q. How many times was that?</p> <p>13 A. I don't remember.</p> <p>14 Q. Can you approximate it?</p> <p>15 A. I don't know.</p> <p>16 Q. Was it less than ten?</p> <p>17 A. Don't know.</p> <p>18 Q. Is there any other way that you -- is</p> <p>19 there any method that you utilized to determine that</p> <p>20 this was gasoline in question, not some other</p> <p>21 substance?</p> <p>22 A. No.</p> <p>23 Q. Just by virtue of the fact that it</p> <p>24 would somehow act upon the blacktop?</p> <p>25 A. Well, no, I would see it, I would</p>	<p>1 Q. Okay. How much fuel was spilt,</p> <p>2 roughly?</p> <p>3 A. I have no clue.</p> <p>4 Q. Was it spilled in the area of the</p> <p>5 spill buckets?</p> <p>6 A. Within the area, yes.</p> <p>7 Q. Okay.</p> <p>8 A. But it's still on the blacktop.</p> <p>9 Q. So it wasn't in the spill bucket?</p> <p>10 A. No.</p> <p>11 Q. And you can't estimate at all how</p> <p>12 much?</p> <p>13 A. No.</p> <p>14 Q. Could you estimate a range in terms</p> <p>15 of gallons?</p> <p>16 A. No. Gas spreads. Liquid spreads.</p> <p>17 When you put it on the ground, it spreads.</p> <p>18 Q. But I'm talking about the instances</p> <p>19 in which you actually saw the Dhandi people spill.</p> <p>20 Not the instances of seeing the stain --</p> <p>21 A. I just --</p> <p>22 Q. You've got to let me finish the</p> <p>23 question because we're not going to have an accurate</p> <p>24 record.</p> <p>25 Not the instances in which you</p>

52 (Pages 202 to 205)

[Page 214]

REPORTER'S CERTIFICATION

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I, NANCY C. BENDISH, a Certified Court Reporter and Notary Public of the States of New Jersey and New York, do hereby certify that prior to the commencement of the aforementioned examination, ROBERT MELECCI was sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any party in this action and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the event nor outcome of this action.

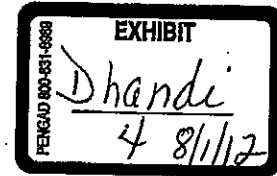


Notary Public of the State of New Jersey
Certificate No. XI00836

Dated: September 24, 2012

EXHIBIT 2

Anthony P. Ambrosio
Attorney at Law
317 Belleville Avenue
Bloomfield, New Jersey 07003
E-Mail: apambrosio@yahoo.com



Telephone 973-748-7474

Facsimile 973-748-0765

January 22, 2007

FL

VIA LAWYERS SERVICE

Stuart J. Lieberman, Esq.
10 Jefferson Plaza
Suite 100
Princeton, New Jersey 08540

Re: Rob's Towing Service/Robert Meleccl
439 Lake Avenue, Colonia, New Jersey

Dear Stuart:

This letter is to advise you that on Wednesday, January 17, 2007 my client, Robert Meleccl, the owner of Rob's Towing Service observed a delivery being made some time in the afternoon by your client's gasoline transportation delivery service. During the delivery gasoline spilled on the ground and pooled underneath the truck. Although the spill was cleaned up, clearly some of the gasoline seeped into the group. This spill appears to be a recurrence of prior spills which may be the cause of the contamination now being investigated by the New Jersey Department of Environmental Protection ("NJDEP").

Clearly the method used to deliver the gasoline does not comply with the standard required for such deliveries. No gasoline should leak during the delivery and your by your client and the delivery company

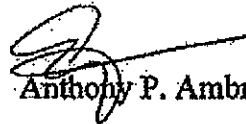
HP282

NJMTBE-HPDELTA-000622

Stuart J. Lieberman, Esq.
January 22, 2007
Page 2

shall be held responsible for any adverse consequences for the negligent manner in which the gasoline deliveries have been made.

Sincerely,



Anthony P. Ambrosio

APA/la

cc: Robert W. Mullenburg, Esq. (via facsimile)
Joy Ricigliano, Esq. (via facsimile)
Mr. Robert Melecci (via facsimile)

HP283

NJMTBE-HPDELTA-000623

**PASRICHA
& PATEL, LLC**
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JEREMY ESAKOFF*

*NJ AND NY
*NY AND MA

February 2, 2007

By Facsimile and Mail

Stuart J. Lieberman, Esq.
10 Jefferson Plaza, Suite 100
Princeton, New Jersey 08540

Re: Dhandi Transport, Inc. with Rob's Towing Service

Dear Mr. Lieberman:

Please be advised that our firm represents Dhandi Transport, Inc. ("DTI"). I am compelled to respond to Mr. Ambrosio's letter to you dated January 22, 2007.


It is our understanding that Mr. Robert Melecci of Rob's Towing Service, the landlord of the property located at 439 Lake Avenue, Colonia, New Jersey, has alleged that our client negligently delivered gasoline products to your client HP Delta on January 17, 2007.

Our client vehemently denies any wrongful conduct. When DTI's driver handled the hose from the truck, a small amount of product, roughly half-liter, leaked onto the ground. Thereafter, the driver immediately soaked up the product with a rag. Therefore, Mr. Melecci's contention that the "gasoline spilled on the ground and pooled underneath the truck" is wrong. There was no pool. Moreover, Mr. Ambrosio's letter implies that there was significant spillage, which simply was not the case.

We therefore reject any claim of negligence asserted by your client or the landlord. We are confident that any environmental damage found on the property was not caused by or exacerbated by our client's conduct.

Please do not hesitate to contact me if you should have any questions or concerns.

Very truly yours,


Gary S. Pasricha

cc: Dhandi Transport, Inc.



HP279

NJMTBE-HPDELTA-000619

EXHIBIT 3

To: Herzberg, Mark[Mark.Herzberg@dep.state.nj.us]
From: valeri.morone@twp.woodbridge.nj.us
Sent: Tue 1/23/2007 2:45:43 PM
Subject: RE: Fwd: HP Delta/Rob's Service Station PI-001463

Hi Mark,

Do you want me to try to find some phone numbers for you?

From: Mark Herzberg [mailto:Mark.Herzberg@dep.state.nj.us]
Sent: Tuesday, January 23, 2007 8:42 AM
To: Morone, Valeri
Subject: Fwd: HP Delta/Rob's Service Station PI-001463

FYI. I am going to be out on site Thursday morning to try to get a hold of/leave cards at homes where I have no phone number. Mark

>>> William Buchanan 1/22/2007 11:56:03 AM >>>

On Thursday January 18, 2007, I visited the HP Delta site with Dave Miele (BSCM). The station was operating and dispensing gasoline fuels.

Upon arrival I observed grading activity at the rear of the station. I questioned station owner Rob Melec about this work. He explained that the recent rain had made the soil at the rear of the station very soft and that his tow trucks normally parked in this location were becoming stuck in this muddy area. He was grading, compacting and removing a minimal amount of soil followed by installation of about two inches of gravel to provide a more suitable parking area.

The NJDEP Emergency Response Services contract EP&S came to the site and removed from the observation wells in the station's tankfield floating product. A total of 2800 gallons of floating product and product contaminated water was removed. The product level ranged from 8 inches to one inch, in the tank wells initially. After four hours of removal and recharge, all wells had no measurable product. Reinspection is scheduled for Thursday January 25 for floating product in these wells. An additional removal action will be taken if appreciable product is observed.

It was noted that in the well closest to Lake Ave., the product was black in coloration but had a strong gasoline odor. The tank adjacent to this well had previously been a diesel fuel tank. The well at the opposite end of the tank field had a clear petroleum product which appeared to be fresh gasoline product with a strong odor.



EXHIBIT 4



245 Fischer Avenue, Suite D
Costa Mesa, CA 92626, US
Tel. +1.714.770.8040
Web: www.aquilologic.com



REVISED SITE SUMMARY

ID # - 41958 HP DELTA SERVICE STATION

Woodbridge Township, Middlesex County,
New Jersey

Prepared on behalf of:

New Jersey Department of Environmental Protection (NJDEP)

The Commissioner of the NJDEP

The Administrator of the New Jersey Spill Compensation Fund

For:

The Office of the Attorney General of New Jersey

and

Miller, Axline & Sawyer

The Law Office of John K. Dema

Berger & Montague

Cohn Lifland Pearlman Herrmann & Knopf

Project No.: 003-01

January 2013



This report addresses items 1 through 7 above, and presents opinions related to that work. Supplemental documents (e.g. remediation feasibility studies [FS], restoration costs) address items 8 and 9.

1.2 History of MTBE Use in New Jersey

MTBE usage in New Jersey began in the late 1970s (NJDEP, 2001). It was used as an octane enhancer throughout the 1980s at low concentrations, primarily in high-octane grade gasoline (NJDEP, 2001). During this time, concentrations of MTBE in premium grade gasoline ranged from 2% to 8%; regular grade gasoline contained a lower percentage (NJDEP, 2001).

In 1990, Congress passed amendments to the Clean Air Act (CAA) that mandated the use of reformulated gasoline (RFG) and wintertime oxygenated fuel (WOF) in areas that had failed to reduce ambient air quality to the National Ambient Air Quality Standards (NAAQS) (NJDEP, 2001). Specifically, the use of WOF during winter months was mandated for 39 urban areas (including 2 areas comprising 21 counties in New Jersey) throughout the country to limit emissions of carbon monoxide (CO), and RFG was mandated for 9 urban areas (including all but 2 counties in New Jersey) to limit emissions of contaminants that lead to the formation of ozone (NJDEP, 2001). These fuels require the presence of oxygen at 2.7% by weight for WOF and 2% by weight for RFG (NJDEP, 2001). MTBE was the primary gasoline additive used to meet the mandated oxygen percentage (NJDEP, 2001). To meet the weight requirements, MTBE would need to account for 15% by volume of WOF (almost 2.5 cups per gallon) and 11% by volume of RFG (about 1.75 cups per gallon) (NJDEP, 2001).

The use of RFG was required beginning January 1, 1995. Although two counties were exempted from this requirement, New Jersey mandated its use statewide in order to streamline gasoline distribution (NJDEP, 2001).

The WOF program was established in the winter of 1992-1993 in both northern and southern New Jersey (NJDEP, 2001). In 1995, southern New Jersey attained the NAAQS for CO and discontinued the WOF program (NJDEP, 2001). In 1997, the NJDEP submitted requests to the United States Environmental Protection Agency (USEPA) to suspend the WOF program in northern New Jersey, citing findings of MTBE risk to water supplies and citizen concerns about the use of MTBE in gasoline (NJDEP, 2001). In 1999, the request was approved with the condition that RFG would be sold during all months throughout New Jersey (NJDEP, 2001).

Upon initiating the WOF program, the state of New Jersey received numerous complaints regarding MTBE (NJDEP, 2001). In 1995, citizens claimed that they felt sick when exposed to the



Soils in the vicinity of the Site are classified as Haledone Urban Land Complex. The Haledone is a coarse loamy basal till with a basalt parent material. The soil is classified as Urban because surfaces in the vicinity are typically covered by pavement, concrete, buildings, and other structures, and the underlying soil is often disturbed (LBG, 2008; 007191).

2.2 Hydrogeology

There are two basic hydrogeologic units of importance at the Site - the Passaic Formation (part of the Brunswick Aquifer), and the unconsolidated glacial sediments known as the Rahway Till (Herman et al. 1998). The Passaic Formation, part of the Brunswick Aquifer, is an important regional aquifer in central and northern New Jersey (Michalski, 1990; Herman, 1998).

Groundwater flow within the Passaic Formation is primarily within secondary porosity that occurs as partings along bedding, fractures, and near vertical joints (Michalski, 1990). The Brunswick Aquifer has been described as a multi-unit leaky aquifer with several water-bearing units of varying transmissivities, which are separated by units that behave as aquitards or semi-confining units (Michalski, 1990).

The Rahway River is located approximately 2-miles to the northeast of the Site, with the Robinson Branch and Middlesex Reservoir approximately 1-mile to the north-northeast of the Site (USGS, 2011). Under pre-development conditions, the Rahway River acts as a regional groundwater discharge feature, and groundwater in the Passaic Formation flowed northeast towards the river (LBG, 2008; 007192). However, domestic supply wells in the area locally affect groundwater flow. Because of this, bedrock groundwater monitoring wells in the vicinity of the Site between October of 2009 and March of 2010 show groundwater flow in the Passaic Formation to the south or the southeast (LBG, 2010; 006911, 006912). Supply wells screened within the Passaic Formation have highly variable yields with an average yield of 19 gallons per minute (gpm) (LBG, 2008; 007192).

Based on local topography, groundwater in the unconsolidated sediments in the vicinity of the Site is interpreted to flow toward the Pumpkin Patch Brook, 0.3 miles to the southwest (LBG, 2008; 006906). However, groundwater contour maps constructed from monitoring well elevation data between October 2009 and March 2010 show shallow local groundwater on-site flowing northwest (LBG, 2010). Depth to water data collected on-site revealed shallow groundwater at depths ranging from 10 to 18 feet bgs (LBG, 2008; 007192).



4.0 SITE HISTORY

4.1 Operational History

A UST Registration Questionnaire from May of 1986 suggests that the Site has operated as a gasoline station since at least 1966 when two steel 4,000-gallon gasoline USTs, two steel 3,000-gallon gasoline USTs, one steel 1,000-gallon waste oil UST, and associated galvanized piping were in use (NJDEP, 1986; 006615). These USTs were believed to have operated at the Site until approximately 1988 (NJDEP, 1986; 006613 to 006615). Prior to March 1989, the five USTs, associated piping and five dispensers were replaced.

Current USTs at the Site include three fiberglass-clad steel 6,000-gallon gasoline storage tanks, one fiberglass-clad steel 4,000-gallon gasoline storage tank, one fiberglass-clad steel 6,000-gallon diesel storage tank, and the associated steel product piping. The questionnaire also indicates that the USTs and piping are not lined and are not equipped with secondary containment (NJDEP, 1989; 006634 to 006634).

The gasoline retail portion of the Site was apparently leased to HP Delta sometime in 1988 (LBG, 2007; 008312).

4.2 Environmental Investigation and Remediation Chronology

The following is a chronology of investigation and remediation activities that have been conducted at the Site:

<u>Date/Period</u>	<u>Activity</u>
December 7, 2004	The earliest record of regulatory involvement with the Site (spill incident #04-12-07-1319-21). It was reported when a turbine spill containment sump on the UST containing regular gasoline was found to be filled with product (LBG, 2007; 008312).
May 11, 2005	A groundwater sample collected from the domestic well located at 31 Morningside Road indicated the presence of benzene at 45 µg/L (APE, 2007; 011243) and MTBE at 12,000 µg/L (APE, 2007; 011243).
June 2, 2005	The domestic supply well located at 31 Morningside Road was re-sampled. Benzene at 130 µg/L (APE, 2007; 011243) and MTBE at 19,000 µg/L were detected (APE, 2007; 011243).



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

<u>Date/Period</u>	<u>Activity</u>
December 5, 2005	The domestic supply well located at 49 Morningside Road was sampled and <u>MTBE at 1,600 µg/L</u> was detected (APE, 2007; 011243).
January 5, 2006	The domestic supply well located at 49 Morningside Road was re-sampled and <u>MTBE was detected at 120 µg/L</u> was detected (APE, 2007; 011243).
March 13 and 14, 2006	The domestic supply well (open borehole from 20 feet to 72 feet [NJDEP, 2007c, 015328]) located at 62 Lancaster Road was sampled on March 13, 2006 and <u>MTBE at 0.95 µg/L</u> was detected (EMSL, 2006a; 015337). The domestic supply well located at 164 Jordan was sampled on March 14, 2006 and <u>MTBE at 220 µg/L</u> was detected (EMSL, 2006b; 006666).
April 13, 2006	The domestic supply well located at 164 Jordan Road was re-sampled and <u>MTBE at 220 µg/L</u> was detected (EMSL, 2006c; 006658).
May 2006	The domestic supply well (open borehole from 31 feet to 79 feet [NJDEP, 2010a, 015010]) located at 100 Lancaster Road was sampled on May 11, 2006 and <u>MTBE at 6.2 µg/L</u> was detected (EMSL, 2006d; 015039). The domestic supply well (open borehole from 20 feet to 81 feet [NJDEP, 2006l; 014696]) located at 85 Lancaster Road was sampled May 18, 2006 and <u>MTBE at 110 µg/L</u> was detected (EMSL, 2006e; 015337). The domestic supply well (open borehole from 27 feet to 70 feet [NJDEP, 2006k; 014836]) located at 86 Lancaster Road was sampled on May 18, 2006 and <u>MTBE at 720 µg/L</u> was detected (EMSL, 2006f; 006653). The domestic supply well located at 99 Lancaster Road was sampled on May 18, 2006 and <u>MTBE at 210 µg/L</u> was detected (EMSL, 2006g; 006686). The domestic supply well (open borehole from 25 feet to 79 feet [NJDEP, 2006k; 014865]) located at 95 Lancaster Road was sampled on May 25, 2006 and <u>MTBE at 420 µg/L</u> was detected (EMSL, 2006h; 014885). The domestic supply well located at 94 Lancaster Road was sampled May 25, 2006 and <u>MTBE at 70 µg/L</u> (Woodbridge, 2006; 008711) was detected. The screen interval for this well is unknown.
June 15, 2006	The domestic supply well (open borehole from 27 feet to 70 feet [NJDEP, 2006k; 014836]) located at 86 Lancaster was sampled and MTBE at 610 µg/L



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

Date/Period	Activity
	<p>was detected (EMSL, 2006i; 006648).</p> <p>The domestic supply well located at 99 Lancaster was re-sampled and <u>MTBE</u> at <u>150 µg/L</u> was detected (EMSL, 2006j; 006643).</p>
July 6, 2006	<p>The domestic supply well located at 95 Lancaster was re-sampled and <u>MTBE</u> at <u>310 µg/L</u> was detected (EMSL, 2006k; 14891).</p>
August 2006	<p>The domestic supply well (open borehole from 20 feet to 81 feet [NJDEP, 2006l; 014696]) located at 85 Lancaster was re-sampled on August 2, 2006 and <u>MTBE</u> at <u>240 µg/L</u> was detected (EMSL, 2006l; 015337).</p> <p>A compliance inspection of the UST system located at the Site was conducted August 5, 2006. The inspection revealed gross soil contamination and floating product in observation wells (secondary leak detection system located within the UST basin) at the Site among other violations (NJDEP, 2006a; 009123).</p> <p>An August 7, 2006 email on a 2004 incident states that, <i>"The incident in NJEMs reports a Line failure and the regular UST taken out-of-service for repairs. The case status is listed as "Awaiting Report" with Initial Notice."</i> (NJDEP, 2006b; 009141).</p> <p>An August 7, 2006 email correspondence from Akshay Parikh of the NJDEP recognized that additional sampling would be necessary to delineate the extent of contamination and to evaluate the homes for intrusion of gasoline vapors into indoor air (NJDEP, 2006c; 009143).</p> <p>It does not appear that indoor air sampling was ever conducted.</p> <p>During an inspection on August 8, 2006, a UST Field Notice of Violation 06-08-08-1117-02 was issued to HP Delta. The violation noted deficiencies in tank overfill protection. A delivery ban was imposed and an order given to cease use of the USTs. It was noted that free-product was observed in all tank field wells (secondary leak detection system located within the UST basin). Corrective action included emptying of USTs within 48-hours (NJDEP, 2006d; 008563).</p> <p>On August 10, 2006, MIG Environmental (MIG) collected groundwater samples from one of the existing tank field monitoring wells (APE, 2007; 011231). This water sample indicated the presence of benzene, MTBE and</p>



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

Date/Period	Activity
	<p>TBA at 14,200 µg/L, 41,900 µg/L, and 5,820 µg/L, respectively (APE, 2007; 011283).</p> <p>Prior to any documented soil and groundwater investigations at the Site, the UST basin was equipped with wells that are believed to serve as a secondary release detection system. For the purposes of this report, this well will be referred to as Tank Field Well MW-4 throughout remainder of the report.</p> <p>The Bureau of USTs requested that Bureau of Risk Management Issue a Directive to the Site on August 11, 2006 (NJDEP, 2006a; 009123).</p> <p>On August 16, 2006 the NJDEP filed a "Directive and Notice to Insurers" (Directive) naming H.P. Delta Inc., Rob's Service Center and Robert Melecci as respondents. The Directive cited that "<i>several potable wells had exceedances of MTBE and/or benzene</i>" (NJDEP, 2006e; 014541) and that "<i>gross soil contamination and floating product was observed during an August 2006 compliance inspection</i>" (NJDEP, 2006e; 014544).</p> <p>The Directive stated that "<i>The Department has determined that it is necessary for the Respondents to conduct departmentally approved investigative and remedial activities at the contaminated Site in order to fully determine the nature and extent of the problem presented by the discharges. Upon completion of the remedial investigation, it will be necessary to implement a remedial action to address the discharges at the Site.</i>" (NJDEP, 2006e; 014544).</p> <p>Respondents were directed to take corrective action that included a receptor evaluation (NJDEP, 2006e; 014545), immediate removal of separate phase hydrocarbons observed during the August 5, 2006 compliance inspection, a remedial investigation of the groundwater contamination, a remedial investigation of the soil contamination, an inspection of the tank system and make any needed repairs, and a vapor intrusion investigation of the Site structure and surrounding structures (NJDEP, 2006e; 014546).</p> <p>The domestic supply well located at 170 Jordan Road was sampled on August 17, 2006 and <u>MTBE</u> at 990 µg/L (EMSL, 2006m; 014852) was detected.</p> <p>H.P. Delta, Inc.'s Legal representative, Lieberman & Blecher, responded to</p>



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

Date/Period	Activity
	<p>the August 16, 2006 Directive in a letter dated August 23, 2006. The response requested that H.P. Delta business re-open immediately (USTs had been mandatorily taken out of service after August 8, 2006 compliance inspection). Letter argued that there was no reason to believe that operations related to the H.P. Delta station were related to the release that was detected. Letter also transmits results of tank system testing performed on August 10, 2006 (LB, 2006a; 009091).</p>
	<p>An email on August 24, 2006 from Bradi Montozzi of NJDEP and Valeri Morone of NJDEP documents that two of the respondents, Robert Melecci and H.P. Delta had not yet committed to complying with the Directive. Email suggests that both respondents are blaming each other (Montozzi, 2006; 009069).</p>
	<p>Legal representatives for the property owner, Robert Melecci, sent a letter on August 28, 2006 to HP Delta suggesting that the problems relating to the gasoline spill were due to the negligence of Dandi Transport, Inc. (AA, 2006, 008528). The letter argued that the spill occurred when the employees of the transporter (Dandi Transport) were in the process of delivering fuel oil at the premises (AA, 2006; 008528).</p>
September 2006	<p>Domestic supply well located at the Site was sampled on September 1, 2006. Benzene at 1.26 µg/L and MTBE at <u>1,440 µg/L</u> were detected. (LBG, 2007; 011285).</p>
	<p>On September 5, 2006, an attorney for HP Delta responded to the August 28, 2006 letter. The letter refutes any claim of a discharge or spill to the environment (LBG, 2006; 008472).</p>
	<p>NJDEP issued a draft Administrative Consent Order (ACO) on September 6, 2006 (NJDEP, 2006f; 008454).</p>
	<p>NJDEP issued a letter to HP Delta indicating that documentation of functional overfill protection had not been received. This request for documentation comes approximately one month after the original violation was observed during the field compliance visit on August 8, 2006 (NJDEP, 2006g; 006544).</p>
	<p>On September 13, 2006, HP Delta's legal representatives sent a letter to NJDEP indicating the HP Delta is not prepared to sign the ACO (LB, 2006d;</p>



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

Date/Period	Activity
October 2006	<p data-bbox="581 296 678 323">008426).</p> <p data-bbox="581 373 1339 485">The domestic supply well located at 170 Jordan Road was re-sampled on October 5, 2006 and <u>MTBE at 1,472 µg/L</u> was detected (GSLI, 2006; 014854).</p> <p data-bbox="581 527 1364 596">Property owner Robert Melecci signed an access agreement with NJDEP on October 6, 2006 (NJDEP, 2006h; 008080).</p> <p data-bbox="581 638 1344 751">Analytical results for temporary well TWP-3 located immediately north of existing UST indicate benzene, <u>MTBE</u> and TBA as high as 15,900 µg/L, <u>242,000 µg/L</u> and 35,400 µg/L, respectively (MIG, 2007; 008380).</p>
December 2006	<p data-bbox="581 793 1344 898">On December 1, 2006, <u>MTBE was detected at 2,690 µg/L</u> and TBA at 993 µg/L in a temporary well (TWP-6) installed at the Site during investigation activities by MIG (Table 3, 2006; 008410).</p> <p data-bbox="581 940 1360 1010">MIG submitted a Site Investigation Report (SIR) to the NJDEP on December 7, 2006 (LBG, 2007; 008118).</p>
January 31, 2007	<p data-bbox="581 1052 1364 1171">The domestic supply well located at 35 Morningside Road was sampled. Benzene at 3.6 µg/L and <u>MTBE at 8,000 µg/L</u> were detected (NJDEP, 2007a; 014666).</p>
February 2007	<p data-bbox="581 1213 1323 1325">The domestic supply well located at 35 Morningside Road was sampled February 11, 2007. <u>MTBE at 791 µg/L</u> was detected (Woodbridge, 2007a; 014675).</p> <p data-bbox="581 1367 1347 1598">On February 28, 2007, NJDEP responded to the MIG SIR with a Notice of Rejection. The correspondence stated that <i>"The Department has determined that this document does not meet the minimum standards required for review and does not present sufficient sampling conducted at the site to qualify as a complete Site Investigation (SI) report."</i> (NJDEP, 2007b; 008208)</p> <p data-bbox="581 1640 1372 1877">NJDEP went on to state that <i>"the report primarily focused on the attempt by HP Delta, Inc. to prove that the primary source of the free phase product and ground water contamination which is presently observed at the existing tank field wells and in the Site's potable well is a result of discharges to the subsurface from the former tank field which previously existed at the site until approximately 1987 (and not the existing tank field.)"</i> (NJDEP, 2007b;</p>



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

Date/Period	Activity
July 2007	<p data-bbox="581 300 1364 447">reportedly encountered in boring TF-4 beginning at a depth of approximately 12 feet bgs (APE, 2007; 011305). This boring was drilled at or near the location of the USTs that were removed prior to the installation of the existing USTs.</p> <p data-bbox="581 499 1364 646">On July 11, 2007, monitoring wells MW-1 through MW-12 were sampled. Benzene, MTBE and TBA were detected at concentrations as high as 20,400 µg/L, 253,000 µg/L, and 14,400 µg/L, respectively in MW-8 (HCR, 2006; 007121 through HCR, 2006; 007123).</p> <p data-bbox="581 688 1364 800">Analytical results of the second reported groundwater sample collected from the on-site domestic supply well indicated 1.1 µg/L of benzene, 2,490 µg/L of MTBE, and 43.9 µg/L of TBA (Accutest, 2007b; 000682-000684).</p> <p data-bbox="581 842 1364 1150">On July 17, 2007, NJDEP responded to the June 12, 2007 SIR. NJDEP stated that <i>"Since the successful completion of an appropriate site investigation still has not been performed and the addressed party has refused to enter into an Administrative Consent Order (ACO) pursuant to the Spill Compensation and Control Act to perform the appropriate site investigation/remedial investigation, the Department will continue to utilize public funds to conduct the proper site investigation, remedial investigation and remediation of the site"</i>. (NJDEP, 2007c; 008287).</p> <p data-bbox="581 1192 1364 1304">The domestic supply well (open borehole from 31 feet to 79 feet [NJDEP, 2010a, 015010]) located at 100 Road Lancaster was re-sampled on July 30, 2007, and MTBE at 26.1 µg/L was detected (GSLI, 2007a; 015033).</p> <p data-bbox="581 1346 1364 1577">Beginning in July of 2007, unconsolidated sediment zone off-site groundwater monitoring wells OMW-1 through OMW-9 and OMW-11 were installed with screened intervals ranging from 2 to 25 feet bgs (Table 1). The wells were installed to terminate within the unconsolidated sediments that overlie the local bedrock. Field activities continued into September of 2007.</p> <p data-bbox="581 1619 1364 1688">Planned off-site well OMW-10 was not installed during these investigation activities.</p> <p data-bbox="267 1730 435 1757">August 20, 2007</p> <p data-bbox="581 1738 1364 1845">Unconsolidated sediment zone off-site groundwater monitoring wells OMW-1 through OMW-9 and OMW-11 were sampled. MTBE was detected in three of the wells at concentrations as high as 3.90 µg/L (HCR, 2010;</p>



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

5.3.2 Flow Direction and Gradient

Groundwater flow in the bedrock aquifer zone (i.e., fractured bedrock wells completed from 50 to 64 feet bgs), as monitored by wells MW-01, MW-02 and MW-03, has been reported to be to the south and southeast (LBG, 2010; 006945, 006947 and 006949). Estimated gradients in the bedrock were approximately 0.01 feet/foot in October 2009 and March 2010 (LBG, 2010; 006945 and 006949). In December 2009, the gradient was estimated at 0.006 to the southeast (LBG, 2010; 006947). The rose diagram shown on Figure 7a ii depicts an overall regional flow direction of south-southeasterly in the bedrock zone in the vicinity of the Site using recent data from MW-01 through MW-03. Figure 7b ii is a map showing recent groundwater elevation results for wells completed in bedrock.

Groundwater elevations in the bedrock zone are generally lower than elevations measured in the unconsolidated sediment zone, indicating a downward vertical gradient between the two zones. For example, a comparison of March 2010 groundwater elevations between unconsolidated zone wells and nearby bedrock wells OMW-2/MW-03, OMW-3/MW-01 and OMW-9/MW-02 indicates that groundwater elevations in the bedrock aquifer are lower than in the unconsolidated zone (by as much as about 15 feet in some wells), indicating a strong downward vertical gradient between the two zones. The downward vertical gradient likely exists naturally, but pumping from the bedrock zone has further increased the head differential between the two aquifer zones.

Under natural conditions, the regional groundwater within the underlying bedrock of the Passaic Formation (Brunswick Formation) would be expected to flow northeast, toward the Rahway River, as this is a regional groundwater discharge feature. However, the pumping of groundwater supply wells in the area has locally affected the groundwater flow patterns.

It is likely that gradients in the bedrock in the vicinity of the Site were influenced by pumping at domestic supply wells. Given the distribution of these wells, groundwater in the bedrock likely flowed to the west-southwest when the supply wells were actively pumping.

5.3.3 Hydraulic Properties

No data regarding the hydraulic properties (e.g., K, T) of the bedrock were collected as part of Site investigations. The bedrock of the Passaic Formation is generally considered non-porous; however, the bedrock is typically fractured along bedding planes and contains variably-spaced joints, which tend to produce a relatively high secondary permeability. These structural elements tend to create anisotropic flow conditions when influenced by well pumping (LBG, 2010; 006706).



The unconsolidated sediments beneath the Site are underlain by bedrock (fractured shale) of the Passaic Formation. Depth to groundwater in the bedrock has been measured from approximately 15 feet bgs to approximately 28 feet bgs. Groundwater flow within the bedrock aquifer is primarily within secondary porosity that occurs as partings along bedding, fractures, and near vertical joints. Currently, groundwater flows southeasterly in the bedrock aquifer at gradients ranging from approximately 0.007 to 0.0125. Historically, the flow of groundwater (and COCs dissolved therein) was likely "controlled" by the pumping at domestic WSWs to the west-southwest of the Site. The K of the bedrock aquifer is expected to be greater than that of the overlying unconsolidated sediments based on testing done in other areas. The horizontal K in the bedrock aquifer has been measured at a mean value of approximately 5.01 feet/day. Although data for hydraulic properties of the bedrock beneath the Site have not been collected, it is expected that groundwater velocities in the bedrock are substantially higher than those of the unconsolidated sediments (reasonable estimates are in excess of 100 feet/year).

8.5.2 Releases

Releases of gasoline were reported to have occurred at the Site in 2004 (turbine sump) and 2006 (tank field monitoring wells). Based on the dates of the release discoveries, MTBE would have been present in the gasoline released in 2004 and likely present in the gasoline measured in the tank field wells in 2006; although, in 2006 most gasoline refiners switched to using ethanol.

8.5.3 Investigation and Remediation

Between 2006 through 2009, a total of 34 wells were installed as part of investigations at the Site (wells MW-1 through MW-24, OWM-1 through OWM-9, and OWM-11). Beginning in 2005, the contamination of groundwater off-site in the bedrock aquifer has been assessed largely through the sampling of numerous domestic supply wells located west-southwest of the Site and three bedrock monitoring wells (MW-01 through MW-03). However, many domestic supply wells that were found to contain MTBE (or other contaminants) at concentrations in excess of water quality standards have been destroyed. Overall, there have been few off-site monitoring wells installed during the course of investigation activities at the site.

In August 2006, interim remediation was implemented to remove LNAPL and groundwater containing high-dissolved phase concentrations from locations in and around the USTs. In May of 2008, a full scale dual-phase remediation system was started up to treat the soil and groundwater of the unconsolidated sediments beneath the Site. A review of available documentation suggests that the SVE portion of the remediation system has not operated since January of 2010, and the groundwater extraction portion of the system is focused on wells



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

movement down into the bedrock aquifer. Due to the combined effect of recharge and local pumping, the contaminated groundwater of the unconsolidated sediments migrated downward to the bedrock aquifer. Once in bedrock, groundwater migrated rapidly westward, in the secondary porosity of the fractured bedrock, to the domestic supply wells.

The current extent the COC plume in the bedrock aquifer is not known since many of the domestic supply wells found to be contaminated were subsequently destroyed. The plume of contaminated groundwater is likely similar to the extent and distribution observed in 2006. However, the plume may now be migrating to the south-southeast.

Contamination released at the Site will continue to migrate with groundwater and, without remediation, the contamination may migrate beyond the delineation boundaries. Therefore, additional investigation is needed to the west-southwest of the Site. Remediation of the bedrock aquifer is also needed to restore the water resource to its pre-impacted condition.



Revised Site Summary Report
ID # - 41958 HP Delta Service Station
January 2013

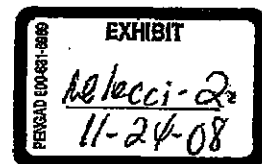
10.0 KEY OPINIONS

1. Releases of gasoline containing MTBE have occurred at the Site. Gasoline releases have been reported at the Site in December 2004 and August 2006. See Section 8.2.
2. MTBE has impacted soil and groundwater beneath the Site. MTBE contamination was first detected in soil beneath the Site in October 2006. See Section 6.2. MTBE contamination was first detected in groundwater beneath the Site in August 2006. See Section 6.4.
3. TBA has impacted soil and groundwater beneath the Site. TBA contamination was first detected in soil beneath the Site in October 2006. See Section 6.2. TBA contamination was first detected in groundwater beneath the Site in August 2006. See Section 6.4.
4. MTBE has migrated off-site beyond the Site boundaries. MTBE contamination in groundwater was first detected in May 2005 in the domestic supply well located at 31 Morningside Drive. See Section 6.4.
5. TBA has migrated off-site beyond the Site boundaries. TBA was detected in off-site well MW-01 on March 2010. See Section 6.4.3.2.
6. Groundwater contamination has not co-mingled with releases from nearby facilities. There is no indication that the plume of contaminated groundwater has co-mingled with gasoline-impacted groundwater associated with a release at another facility.
7. Investigations have failed to delineate the current extent of MTBE contamination in groundwater laterally. MTBE is not delineated laterally in the bedrock zone. See Section 6.4.3.2.
8. Investigations have failed to delineate MTBE in groundwater vertically. MTBE is not delineated vertically in the bedrock zone. See Section 6.4.3.2.
9. Investigations have delineated the current extent of TBA contamination in groundwater laterally. The plume of TBA contaminated groundwater appears to be laterally delineated and extends 250 feet west of the Site. See Section 6.4.3.3.
10. Investigations have failed to delineate TBA in groundwater vertically. TBA was detected in the on-site domestic supply well in July 2007. See Section 6.4.3.2.
11. MTBE contamination in groundwater exists beyond the current monitoring network. MTBE in groundwater extends at least 1,350 feet to the west-southwest of the Site (MTBE detected in domestic supply wells at 164 Jordan Road and 170 Jordan Road) See Section 6.4.3.3.
12. TBA contamination in groundwater exists beyond the current monitoring network. TBA was detected in off-site well MW-01 in March 2010 and also in the domestic supply well located on-site on July 11, 2007. TBA has not been delineated vertically. See Section 6.4.3.2.



13. Remediation performed to date appears to be effectively addressing on-site groundwater contamination in unconsolidated sediments. Given the nature of the unconsolidated sediments (e.g. relatively low K), the selected remedy is working about as well as can be expected. Continued operation of the system is recommended. See Section 7.
14. Remediation performed to date has failed to effectively control the off-site migration of groundwater contamination. Off-site contamination continues to persist. On-site remedial efforts were implemented after off-site contamination was already present. See Section 6.
15. Remediation performed to date has failed to effectively remediate off-site groundwater contamination. Groundwater sample results from well MW-1 suggested that the contamination detected in several domestic supply wells to the west-southwest continues to be present in the bedrock zone. See Section 6.4.3.2.
16. Additional off-site investigation is required. The lateral and vertical extents of MTBE in the bedrock zone have not been delineated. See Section 6.4.3.2.
17. Investigation of deeper groundwater zones is required. Contamination was detected in the bedrock aquifer at depths up to 100 feet bgs. Monitoring wells screened deeper than 100 feet bgs have not been installed in the vicinity of Site. See Section 6.4.3.2.
18. Additional on-site remediation of groundwater is required. Based on available data, continued operation of the selected remedy is recommended.
19. Off-site remediation of groundwater is required. No remediation of off-site groundwater has been performed to date and the observed off-site groundwater contamination in bedrock warrants remediation. See Section 6.4.3.
20. Releases pose a threat to deeper aquifers. COCs have been detected in nearby WSWs completed into bedrock and also in bedrock-zone monitoring well MW-01. See Section 6.4.
21. Releases pose a threat to other receptors. At least 23 of the domestic supply wells have been contaminated with MTBE and other nearby domestic wells are threatened. It is likely that groundwater contamination extended to Pumpkin Patch Brook, and this surface water body is still threatened by contamination. Contaminant vapors pose a risk to occupants at nearby buildings. Even though continued operation of the on-site remediation system should mitigate these risks, a vapor intrusion assessment is warranted. See Section 8.4 and Table 3.

EXHIBIT 5



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Bloomfield, New Jersey
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Telephone (973) 748-7474

Facsimile (973) 748-0765

Aug 28, 2006

Via Certified & U.S. Mail

H.P. Delta, Inc.
Attn: Gurmail Singh
35 Farm Haven Avenue
Edison, NJ 08820

Re: Gasoline Spill at 439 Lake Avenue, Colonia, New Jersey
Date of Spill: August 8, 2006

Dear Mr. Singh:

This letter is advise you that I have been retained by your landlord Robert Melecci to deal with the problems relating to the gasoline spill due to the negligence of Dandi Transport, Inc. Apparently, the spill occurred when the employees of the transporter were in the process of delivery fuel oil at the premise which Delta leases from Mr. Melecci. The New Jersey Department of Environmental Protection has assigned a UST Registration # 001463 and case # 04-12-07-1319-21 and issued an Underground Storage Tank Field Notice of Violation to Robert Melecci, Rob's Service Center, and H.P. Delta, Inc., on August 16, 2006. Immediate steps are required.

Mr. Melecci has been served with notice of his responsibility to remedy the problem by the Health Department of the Township of Woodbridge as well as the New Jersey Department of Environmental Protection because he is the owner of the premises. Your lease provides that as the tenant you are responsible to the landlord for any damages "caused by the carelessness, negligence or improper conduct on the part of the Tenant or the Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors" and further that "the Tenant shall repair the said damage or replace of (sic - should read "or") restore any destroyed parts of the premises, as speedily as possible, at the Tenant's own cost and expense. See paragraph 4. of the lease, a copy of which is attached hereto.

Mr. Melecci has notified the insurance carrier Zurich American Insurance Company and requested that it take immediate steps to remedy the pollution and to comply with the demands



MEL 0492

made by the NJDEP. Demand is hereby made of you as the Tenant pursuant to the said lease to do that which is necessary to satisfy any and all requirements of the local municipalities and the State of New Jersey in the remedying the damages caused by the fuel oil spill.

If necessary to protect the interests of my client Robert Melecci I am prepared to resort to litigation to compel you and your Insurer Zurich to comply with any requirements of local and state laws to which my client may be subjected and to indemnify my client from any harm. You should contact me immediately, and at any time in the future, to inform me as to the status of the remedial efforts you have or will undertake in order that I may so advise the appropriate authorities.

Very truly yours,

Anthony P. Ambrosio

cc: NJDEP

Attn: Ronald T. Corcoran
Asst Director, Oversight Resources Allocation Element
Central Bureau of Water Compliance & Enforcement
Route 130 South, 300 Horizon Center
Robbinsville, New Jersey 08625-0407

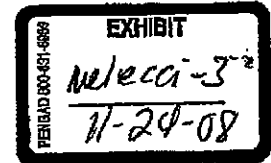
Township of Woodbridge
Attn: Dennis M. Green
Health Officer/Director of Health
One Main Street
Woodbridge, New Jersey 07095

Zurich American Insurance Company
1400 American Lane
Tower 1 Floor 13
Schaumburg, Illinois 60196
Attn: Environmental Claims Unit

Robert Melecci
Rob's Towing & Service Center
439 Lake Avenue
Colonia, New Jersey 07067

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SHARI M. BLECHER
ATTORNEY AT LAW
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September 5, 2006

VIA FACSIMILE & REGULAR MAIL

Anthony P. Ambrosio, Esq.
317 Belleville Avenue
Bloomfield, NJ
Fax: 973-748-0765

Re: DEP Enforcement Action, 439 Lake Avenue, Colonia, New Jersey

Dear Mr. Ambrosio:

This firm represents H.P. Delta, the tenant in the referenced matter. In your letter of August 28, 2006 you refer to an alleged "spill" you claim took place on August 8, 2006 at the above referenced property. I have spoken with Dandi Transport, Inc. and I am aware of no such discharge or spill into the environment. If you have any evidence of this alleged spill, I would appreciate it if you would send it to me. But for now, my client and Dandi Transport are in the dark as to this issue.

Of much greater significance, you indicated that the date of this occurrence was August 8, 2006. As you are aware, evidence that contamination was released from your client's property predates August 8, 2006 by many months. As a matter of fact, Dandi Transport was decommissioning the tanks because the NJ DEP was responding to the contamination that had been detected well before August 8, 2006. It is therefore illogical to suggest that something that would have occurred on August 8, 2006 is responsible for the substantial discharge that obviously occurred long before August 8, 2006.

Not only does your position appear to be chronologically impossible but it also defies the substantial evidence that the tanks and piping have been tight ever since my clients began their operations. Please note that the enclosed tank tightness tests show that the tank systems had passed each test since H.P. Delta began operating the site in late 2003. I would note that you have not produced any document in proof that is inconsistent with the written test results reflecting the integrity of the system during my client's operations.

Therefore, in light of the chronological problems expressed herein, and in light of the substantial evidence showing my client's compliant operation of the property that has thus far



MEL 0495

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been produced, I am at a loss as to how you blame my client or Dandi Transport for the contamination on your client's property which clearly predates the current lease. And it is frankly shocking that you would present these baseless accusations to Mr. Corcory, of the NJDEP and to Woodbridge Township.

It is clear that from all currently available information that this contamination predates the current lease. It is also a fact that my clients have been compelled to cease doing business at the property as a result of the discharge for which your client is legally liable. Accordingly, demand is hereby made that your client immediately undertake all remedial measures being demanded by the NJDEP in order to obtain a NFA at this time. Further, demand is hereby made that your client reimburses my client damages, costs, and fees necessitated by the disruption of business associated by the discharge for which your client has legal responsibility.

If you have any questions, please feel free to contact me.

Very truly yours,

Shari M. Blecher /s/

SHARI M. BLECHER, ESQ.
Lieberman & Blecher, P.C.

Enclosure

cc: H.P. Delta, Inc.
Ronald Corcory, NJDEP
Woodbridge Township

EXHIBIT 6

Gary S. Lipsius

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary	Master File
Butyl Ether ("MTBE")	No. 1:00-1898
Products Liability	MDL 1358
Litigation	(SAS): M21-88

This Document Relates To:

New Jersey Department of Environmental
Protection, et al., v. Atlantic Richfield
Co., et al.
No. 08 Civ. 00312

- - -

August 2, 2012

- - -

Oral Rule 30(b)(6)
deposition of Plaintiff New Jersey
Department of Environmental Protection,
through its representative GARY S.
LIPSIUS, REGARDING HP DELTA, taken
pursuant to notice, was held at the
offices of the STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
401 East State Street, Trenton, New
Jersey, beginning at 9:56 a.m., on the
above date, before Kimberly A. Cahill, a
Federally Approved Registered Merit
Reporter and Notary Public for the State
of New Jersey.

- - -

GOLKOW TECHNOLOGIES, INC.
877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

<p style="text-align: right;">Page 30</p> <p>1 something that came in last week that 2 hadn't yet been turned over. 3 A. Not to my knowledge. 4 Q. When is the last time that 5 you made documents available to counsel? 6 I understand that your 7 working file and other files have been 8 turned over. Do you know approximately 9 when that was? 10 MR. SHANNON: The question 11 is overbroad, vague, and ambiguous 12 as phrased. 13 THE WITNESS: Okay. The -- 14 may I answer? 15 MR. SHANNON: Yes. 16 THE WITNESS: The last 17 document that I provided to 18 counsel that I can specifically 19 remember was the classification 20 exception area proposal, which I 21 e-mailed to Leonard Kaufmann. 22 MS. HANE BUTT: Okay. 23 BY MS. HANE BUTT: 24 Q. Aside from that document,</p>	<p style="text-align: right;">Page 32</p> <p>1 Can I speak with the questioner 2 when we have a chance -- 3 MS. HANE BUTT: Yeah, we can, 4 but there's a question pending, so 5 I'd like to -- 6 THE WITNESS: Repeat the 7 question. I'm sorry. 8 - - - 9 (The court reporter read the 10 pertinent part of the record.) 11 - - - 12 THE WITNESS: Okay. The 13 project currently is under O and 14 M. I can clarify what that is. 15 That's operation and maintenance. 16 Jane TenEyck is the project 17 manager for the operation and 18 maintenance portion of the HP 19 Delta site. She may have had 20 submissions since then from her 21 own contractor. 22 My portion of this case, 23 which was specifically with 24 respect to the remedial</p>
<p style="text-align: right;">Page 31</p> <p>1 have there been any other documents 2 generated for this site in the last, say, 3 six months or since your deposition in 4 October of 2011? 5 MR. SHANNON: Calls for 6 speculation. 7 THE WITNESS: Okay. I can 8 answer? 9 MS. HANE BUTT: You don't 10 have to ask him that every time. 11 He'll tell you -- 12 THE WITNESS: Actually, 13 Leonard would say -- he would say 14 something like that and say "you 15 may answer." 16 MR. SHANNON: Yes, and one 17 important thing is, only one 18 person can speak at the same time, 19 because you can imagine how 20 difficult -- 21 THE WITNESS: Sorry. 22 MR. SHANNON: -- you can 23 imagine how difficult -- 24 MR. LIEBERMAN: Excuse me.</p>	<p style="text-align: right;">Page 33</p> <p>1 investigation conducted by Louis 2 Berger, the answer would be no; 3 but for the case as a whole, I 4 can't testify as to what she is 5 doing with her contractor. 6 Is that clear? 7 MS. HANE BUTT: Yes, it is. 8 BY MS. HANE BUTT: 9 Q. Let me just ask a couple of 10 follow-up questions: With respect to the 11 O and M work that's being done, which 12 contractor has been retained to do that 13 work? 14 A. Based upon my review of the 15 file, it is EnviroTrac. 16 Q. And you said before that you 17 did not speak to Miss TenEyck to prepare? 18 A. I did not. 19 Q. Okay. 20 A. She's out in the field a 21 lot. 22 Sorry. 23 MR. SHANNON: Yes, no 24 question.</p>

Page 42

1 was being deposed for this HP Delta site
2 and that she had been -- that I mentioned
3 that I had seen her name listed on some
4 of the enforcement documents at the time
5 she worked for Mr. Corcory.

6 And I asked her what she
7 remembered about the -- the site,
8 enforcement-wise.

9 Q. And what did she have to say
10 in that regard?

11 A. She told me that she really
12 didn't remember much about it at all, and
13 it wasn't a very long discussion. She
14 just said, you know, I barely remember
15 the case. I remember there was some --
16 some potable wells that were
17 contaminated, but she said she didn't
18 really have much detail to give me.

19 Q. Is it the DEP's contention
20 that releases from the HP Delta station
21 caused the MTBE impacts to the potable
22 wells along Lancaster Road?

23 MR. SHANNON: Calls for
24 expert opinion. It's beyond the

Page 44

1 contamination found at the HP
2 Delta site is in some part
3 responsible for the potable well
4 contamination associated with the
5 Lancaster Road site. And that
6 would be shown by the directive
7 and in the inclusion of a
8 Lancaster Road well issue in the
9 HP Delta directive.

10 BY MS. HANE BUTT:

11 Q. And what is the basis for
12 concluding that the HP Delta site is in
13 some part responsible for the Lancaster
14 Road contamination?

15 MR. SHANNON: Calls for
16 expert opinion. It's beyond the
17 scope for which this witness is
18 being produced. I think that
19 question is --

20 MS. HANE BUTT: No coaching.
21 You can just state your objection
22 -- I'm just going to tell you, as
23 a matter of courtesy, because
24 you're new to the case and you

Page 43

1 scope for which this witness is
2 being produced.

3 THE WITNESS: Could you
4 clarify the question, the NJDEP's
5 position?

6 BY MS. HANE BUTT:

7 Q. Well, you're here today as a
8 representative of the DEP.

9 A. Right.

10 Q. And as such, you have an
11 obligation to answer questions based on
12 information known to or available to DEP,
13 and I'm just wondering if DEP has a
14 position that the HP Delta station is
15 responsible for the MTBE impacts in the
16 potable wells along Lancaster Road.

17 MR. SHANNON: Calls for
18 expert opinion and it's beyond the
19 scope for which this witness is
20 being produced.

21 THE WITNESS: I believe it
22 would be NJDEP's position that the
23 contamination -- the MTBE
24 contamination and TBA

Page 45

1 have not met Her Honor, Judge
2 Scheindlin, but she does not take
3 very kindly to coaching witnesses
4 on the record.

5 All you're allowed to do is
6 state the basis for your
7 objection. Anything else is
8 improper.

9 And if I have to, I'll get
10 Special Master Warner on the
11 phone. He, in fact, has invited
12 as much, so --

13 MR. SHANNON: That's what I
14 was in the process of doing,
15 counsel, and if I may finish, it's
16 beyond the scope for which this
17 witness is produced.

18 I think that question is
19 most appropriately addressed to
20 Mr. Akshay Parikh, who will be
21 produced later today regarding the
22 issues related to the Lancaster
23 Road wells.

24 MR. HANE BUTT: Are you able

Gary S. Lipsius

Page 46

1 to answer the question?

2 THE WITNESS: Could you

3 repeat the question?

4 MS. HANE BUTT: Sure. Could

5 you repeat it?

6 - - -

7 (The court reporter read the

8 pertinent part of the record.)

9 - - -

10 THE WITNESS: Okay. Well,

11 I'm going to have to ask you for

12 more clarification.

13 MS. HANE BUTT: I'm just

14 responding to your answer, so --

15 THE WITNESS: Right. I

16 understand; but as time went on,

17 that may have changed, because new

18 data was generated. So could you

19 give me a time frame at which --

20 BY MS. HANE BUTT:

21 Q. Well, I'm most interested in

22 their position right now.

23 A. Right now.

24 Q. And I take it from your

Page 47

1 testimony that your answer is that DEP's

2 position is that the HP Delta station is

3 in some part responsible for the MTBE

4 impacts in the potable wells along

5 Lancaster Road; is that a correct

6 statement of the position today?

7 A. Yes.

8 Q. Okay.

9 And then the basis for that

10 opinion would be what?

11 MR. SHANNON: Same

12 objections.

13 THE WITNESS: Okay. We --

14 if you refer to the remedial

15 investigation report, there were

16 two rounds of groundwater sampling

17 that were done. All the wells

18 were sampled in the study area --

19 and the study area, I mean not

20 only at the gas station, but the

21 16 wells that had also -- when I

22 speak of wells, I am speaking of

23 --

24 MS. HANE BUTT: Monitoring

Page 48

1 wells?

2 THE WITNESS: Monitoring

3 wells, not potable wells.

4 MS. HANE BUTT: Understand.

5 THE WITNESS: -- those wells

6 had been sampled twice. This was

7 done in approximately -- at 2010,

8 I believe. The first round was

9 done when the system -- the

10 treatment system was operational.

11 And we --

12 BY MS. HANE BUTT:

13 Q. And that's the SVE system?

14 A. Correct -- we did not find

15 contaminants of concern above the

16 applicable standards in that first round.

17 Q. The applicable standard

18 being 70 --

19 A. The groundwater quality

20 standard for the contaminants at the

21 site, so 70 for TB -- MTBE -- you know,

22 whatever they were at the time.

23 Q. Okay.

24 A. Some of those standards may

Page 49

1 have changed.

2 Q. Understood.

3 A. The second round of

4 sampling, I instructed my contractor to

5 have the system shut down. All of the

6 wells, except for one, had -- they again

7 came up without contamination associated

8 with the site.

9 However, there was a well --

10 it's MW-01. It's a deeper monitor well.

11 It is right near the gas station -- right

12 on a private residence -- and that's

13 actually a dental office right on the

14 sidewalk there -- that came up with some

15 significant levels of contamination, and

16 that is in the direction of the potable

17 wells.

18 And that leads me to

19 believe, as the departmental

20 representative and the most knowledgeable

21 person on the case at this time, that it

22 would be -- you could assume that there

23 is some potential impact to the potable

24 wells from the gas station based upon the

13 (Pages 46 to 49)

Gary S. Lipsius

Page 50	Page 52
<p>1 proximity and the contaminants. 2 Q. What's the groundwater flow 3 direction at the site? 4 MR. SHANNON: Calls for 5 expert opinion. 6 THE WITNESS: Can you be a 7 little bit more specific as to 8 groundwater flow direction? 9 BY MS. HANE BUTT: 10 Q. Yeah. Okay. 11 Is there shallow groundwater 12 flow? 13 A. Yes, there is. 14 Q. What's the direction of 15 shallow groundwater flow? 16 MR. SHANNON: It's vague and 17 ambiguous as to time. 18 THE WITNESS: The -- 19 MR. SHANNON: Calls for 20 expert opinion. 21 THE WITNESS: Okay. The 22 classification exception area 23 documents and the remedial 24 investigation report for the</p>	<p>1 between the station and the Lancaster 2 Road wells that have been impacted? Is 3 it within that -- is it consistent with 4 groundwater flow? 5 MR. SHANNON: Calls for 6 expert opinion. It's vague and 7 ambiguous as phrased. 8 THE WITNESS: It's not 9 really. I was surprised to see 10 that. But sometimes with 11 contaminant flow in fractured 12 geology, especially with the 13 contaminant levels that we've seen 14 at this site, you can see data 15 that doesn't -- especially in an 16 anisotropic and nonhomogenous 17 aquifer, you can see data that is 18 not always what you would expect 19 based upon regional groundwater 20 flow. 21 And also the fact that the 22 system, when on, we did not see 23 that contaminant in MW-01 and, 24 when we shut it off, you did,</p>
Page 51	Page 53
<p>1 shallow groundwater shows sort of 2 an anomalous-looking set of data, 3 but more or less it seems to be 4 going to the north-northeast, 5 towards the Rahway River. 6 BY MS. HANE BUTT: 7 Q. And what is the direction of 8 the deep groundwater flow? 9 MR. SHANNON: Calls for 10 expert opinion. It's vague and 11 ambiguous as to time. 12 THE WITNESS: The deep 13 groundwater flow, again, as shown 14 in the case file and in the 15 remedial investigation report and 16 CEA proposal, shows that the deep 17 groundwater is going in a 18 southerly -- southeast general 19 direction. 20 BY MS. HANE BUTT: 21 Q. And monitoring well 1, was 22 that installed in the deeper aquifer? 23 A. Yes. 24 Q. And is monitoring well 1</p>	<p>1 leads me to believe that it is 2 coming from that source, the gas 3 station, HP Delta. 4 BY MS. HANE BUTT: 5 Q. Now, you said that it's the 6 DEP's position that the HP Delta site is 7 in some part responsible for the 8 Lancaster Road impacts. 9 Is it solely responsible? 10 MR. SHANNON: Calls for 11 expert opinion. 12 THE WITNESS: I really can't 13 make a judgment on that. 14 BY MS. HANE BUTT: 15 Q. Are there other potential 16 sources in the area? 17 MR. SHANNON: Calls for 18 expert opinion, speculation. 19 THE WITNESS: Well, just 20 generically speaking, I'd have to 21 say, in North Jersey, a densely 22 populated area like that, there's 23 always other potential sources. 24 BY MS. HANE BUTT:</p>

14 (Pages 50 to 53)

Page 58

1 those other sites vis-a-vis the HP Delta
2 site.

3 Q. Right. What are those other
4 sites?

5 A. Well, I know there is an --
6 and I'm not sure if that's within the
7 scope of this, but if counsel --

8 Q. It is. Topics 5 and 33.

9 A. Okay.

10 Q. You can refer to the notice
11 if you'd like.

12 A. Fine. I'm not a lawyer.

13 MR. SHANNON: I'm just going
14 to object that it violates the
15 case management order. It's
16 beyond the scope of the
17 deposition.

18 You can go ahead.

19 THE WITNESS: Okay. All
20 right. I know there is a site on
21 Inman Avenue. I forget -- it was
22 some sort of -- I went with a
23 colleague of mine. We did a joint
24 site visit.

Page 59

1 BY MS. HANE BUTT:

2 Q. Did it have a reported
3 release?

4 MR. SHANNON: Same
5 objections.

6 THE WITNESS: I believe it
7 did.

8 MR. LIEBERMAN: Inman
9 Avenue, did you say?

10 THE WITNESS: Yeah.

11 BY MS. HANE BUTT:

12 Q. And was there another one
13 you were going to mention?

14 A. There was a -- I know that
15 there is -- there are several gas
16 stations in that vicinity.

17 Many years ago, I had a
18 discussion with a gentleman named
19 Jonathan Berg, who's in our tank
20 enforcement group. This group actually
21 monitors operational facilities --

22 Q. BUST?

23 A. BUST, yes -- no, he's not in
24 BUST, actually.

Page 60

1 Q. Oh, okay.

2 A. It's the tank enforcement
3 group where they -- BUST deals more with
4 remedial issues. This group deals with
5 tanks that -- you know, their secondary
6 containment, their -- you know, checking
7 to make sure that they're not leaking
8 product, et cetera, operational
9 facilities.

10 And he had mentioned to me
11 that there were some other -- just
12 vaguely, some other tanks out there that
13 they were looking at at various gas
14 stations. This is again to the south.

15 But I don't have any
16 specific information linking those sites
17 to the HP Delta site.

18 Q. Now, you talked about there
19 were two groundwater sampling events, one
20 when the SVE system was operational and
21 one when it wasn't.

22 Have there been any more
23 recent groundwater sampling events?

24 MR. SHANNON: Vague and

Page 61

1 ambiguous as phrased.

2 THE WITNESS: No, not that
3 I'm aware of.

4 And both of -- the remedial
5 investigation report has that
6 information, which has been
7 provided to counsel.

8 MS. HANE BUTT: Right.

9 BY MS. HANE BUTT:

10 Q. Other than the hit in
11 monitoring well number 1, is there any
12 other information upon which DEP relies
13 to conclude that the HP Delta site is a
14 source of the impacts to the wells along
15 Lancaster Road?

16 MR. SHANNON: Calls for
17 expert opinion.

18 THE WITNESS: Well, again,
19 this goes back to my prior
20 question to you as regards to
21 time, because -- and going back to
22 my trying to get a hold of Mr. Ron
23 Corcoran.

24 If you were talking about

Gary S. Lipsius

Page 62	Page 64
<p>1 2006, the answer to that question 2 would be different than if you're 3 talking about 2010. 4 MS. HANE BUTT: Yeah. I'm 5 interested in the current 6 position. 7 THE WITNESS: The current 8 position. 9 MR. SHANNON: Same 10 objections. 11 THE WITNESS: Could you 12 repeat the question? 13 MS. HANE BUTT: Sure. 14 THE WITNESS: Sorry. 15 - - - 16 (The court reporter read the 17 pertinent part of the record.) 18 - - - 19 THE WITNESS: Again, as I 20 mentioned in my prior answer, I 21 believe the two primary issues 22 that the DEP was looking at and is 23 still currently looking at is the 24 proximity, number one, and the</p>	<p>1 MR. SHANNON: It's vague and 2 ambiguous as phrased, calls for 3 expert opinion. 4 MS. HANE BUTT: You just said 5 potential, so I'm trying to 6 explore that. 7 MR. SHANNON: Same 8 objections; beyond the scope of 9 the deposition -- or beyond the 10 scope for which this witness is 11 being produced. 12 THE WITNESS: Again, I think 13 Mr. Parikh would have some good 14 insight into this question, but 15 I'd be happy to answer the 16 question, if I may. 17 MR. SHANNON: Go ahead. 18 THE WITNESS: Okay. 19 I would say it's -- looking 20 at the total history of the case 21 and the contaminants and the 22 proximity, that it's a -- the HP 23 Delta site is a likely source. 24 So you asked me to define</p>
Page 63	Page 65
<p>1 contaminants that were found in 2 the potable wells. 3 BY MS. HANE BUTT: 4 Q. Anything else? 5 MR. SHANNON: Same 6 objection. 7 THE WITNESS: As I mentioned 8 before, I think the fact that 9 MW-01 contaminant levels found 10 when the system was shut off, 11 which is in the direction of the 12 potable wells, also would lend one 13 to think that -- you know, that 14 the northwest direction of the 15 site, notwithstanding the 16 groundwater -- deep groundwater 17 flow levels, it still seemed to be 18 a potential source of the potable 19 well contamination. 20 BY MS. HANE BUTT: 21 Q. What degree of confidence do 22 you attach to that conclusion that HP 23 Delta is a source of impacts to the 24 Lancaster Road wells?</p>	<p>1 the probability, I would say 2 likely. Likely doesn't mean for 3 certain, but it's reasonable to 4 assume that there has been a major 5 component coming from the HP Delta 6 site. 7 BY MS. HANE BUTT: 8 Q. Aside from Mr. Corcoran, is 9 there anyone else that you would have 10 liked to talk to to prepare for the 11 deposition that you couldn't? 12 A. Well, I did speak with Bradi 13 -- 14 Q. Did you get any documents 15 from Bradi? 16 A. No -- but -- and Mr. Corcoran 17 probably would have -- since he was in 18 charge at the time -- -- 19 MR. SHANNON: Don't 20 speculate. 21 THE WITNESS: -- I would 22 have wanted to speak with him. I 23 don't think there's anyone else I 24 would speak to.</p>

17 (Pages 62 to 65)

Gary S. Lipsius

Page 134

1 this e-mail, that -- I don't want
 2 to-speculate, but an IEC condition
 3 is either potable well
 4 contamination, vapor intrusion
 5 problem, or an explosive
 6 situation, so --
 7 BY MS. HANE BUTT:
 8 Q. Was there a vapor intrusion
 9 problem associated with this site?
 10 A. Not to my knowledge. And,
 11 again, that, I would like to add, would
 12 be Mr. Parikh's purview.
 13 Q. Okay.
 14 A. And at some point, I could
 15 --
 16 Q. I'll add it to my list.
 17 A. Okay. Because his group
 18 dealt specifically at that time with
 19 immediate environmental concern issues,
 20 which I indicated earlier include vapor
 21 intrusion issues or potable well
 22 contamination; and my group, we deferred
 23 that to his group internally.
 24 Q. Fair enough.

Page 135

1 A. Yeah.
 2 Q. Michael Hollis is on this
 3 e-mail. I don't think we've talked about
 4 him before. Have you talked to him about
 5 this site?
 6 A. I don't even recognize that
 7 name.
 8 Q. Okay.
 9 A. Which is unusual.
 10 MS. HANE BUTT: 18.
 11 - - -
 12 (Deposition Exhibit No. HP
 13 Delta-18, 2/28/07 Report of
 14 Inspection by Miele,
 15 NJ-LBG-ELEC-0107467 through
 16 NJ-LBG-ELEC-0107470, was marked
 17 for identification.)
 18 - - -
 19 BY MS. HANE BUTT:
 20 Q. HP Delta-18 bears Bates
 21 NJ-LBG-ELEC-0107467 and it is a
 22 multiple-page document, so why don't you
 23 take a minute to look it over and then
 24 I'll direct you specifically.

Page 136

1 A. Okay.
 2 (Pause.)
 3 BY MS. HANE BUTT:
 4 Q. The part I want to ask you
 5 about is in section D.
 6 A. Okay.
 7 (Pause.)
 8 THE WITNESS: Okay.
 9 BY MS. HANE BUTT:
 10 Q. Okay.
 11 I think you testified
 12 earlier that you visited the site with
 13 Mr. Buchanan; correct?
 14 A. Yes.
 15 Q. Is this a description of the
 16 site visit that you were referring to
 17 earlier?
 18 A. Yes. I've been to the site
 19 numerous times --
 20 Q. I see.
 21 A. -- so I'm not sure if --
 22 Q. Okay.
 23 A. Yeah.
 24 Q. From my reading of this

Page 137

1 document, it appears that two other
 2 potential sources were being discussed in
 3 this section; is that a correct reading?
 4 A. Yes.
 5 Q. Do you know with respect to
 6 the second site --
 7 A. Gas Star site?
 8 Q. Correct -- it said that
 9 additional information was necessary in
 10 order to make a determination whether or
 11 not it is a potential source.
 12 Do you know whether the work
 13 that is reflected in paragraph D, namely,
 14 groundwater monitoring wells, were
 15 installed?
 16 A. I do not. Actually, I'm not
 17 familiar with this Gas Star facility.
 18 Q. So you don't know whether
 19 that work was ever ultimately done?
 20 A. No.
 21 Q. Do you know whether any
 22 conclusions were drawn as to whether or
 23 not Gas Star could be a potential source?
 24 A. I don't.

35 (Pages 134 to 137)

Gary S. Lipsius

Page 138	Page 140
<p>1 Q. What about the other site, 2 the Getty 56904 on Inman Avenue? 3 A. Well, I believe I alluded to 4 that facility earlier -- 5 Q. Yes, you did. 6 A. -- and I -- if I recall 7 correctly, I believe on that same day, 8 Mr. Miele and I took a drive over there. 9 But, again, as I also 10 indicated to you and in my previous 11 testimony, it's important to understand 12 how we look at projects. 13 We weren't performing an 14 unknown source investigation. A remedial 15 investigation is specific to one site 16 which receives a directive. 17 Q. Understood. 18 A. Okay. 19 - - - 20 (Deposition Exhibit No. HP 21 Delta-19, 2/2/10 E-Mail from W. 22 Buchanan to O'Neill, 23 NJDEP-SS-EMAIL-100007964, was 24 marked for identification.)</p>	<p>1 intermediary between the site, meaning 2 the HP Delta site, and the contaminated 3 wells was clean? 4 A. No, I don't remember that, 5 and that's not really what the RI report 6 shows. We did have some contamination 7 migrate off the site when the system was 8 shut down. 9 Q. So do you think this e-mail 10 preceded that second sampling event? 11 A. Probably. I know Mr. 12 Buchanan and he can jump to the gun 13 sometimes. 14 Q. The next sentence says, "The 15 flow direction from the site to the 16 contaminated residential wells was also 17 about 90 degrees in the wrong direction." 18 Do you agree with that 19 statement? 20 MR. SHANNON: Calls for 21 expert opinion. 22 THE WITNESS: Well, again, 23 we discussed this earlier. In an 24 anisotropic and nonhomogeneous</p>
Page 139	Page 141
<p>1 - - - 2 BY MS. HANE BUTT: 3 Q. HP Delta-19 bears Bates 4 numbers NJDEP-SS-EMAIL-100007964, and it 5 is an e-mail from Mr. Buchanan to Mr. 6 O'Neill, dated February 2nd, 2010. 7 Have you seen this document 8 before? 9 A. I don't believe I have. 10 Q. The e-mail references a 11 meeting with Berger on February 2nd, 12 2010. Do you know whether or not you 13 attended that meeting? 14 A. I'm not sure. I can't 15 assume that I was at the meeting, but I 16 can't definitively say I was. Berger was 17 -- it was my contractor, so -- 18 Q. You would be surprised if 19 there was a meeting that you weren't at? 20 A. That's correct. 21 Q. Do you recall a meeting 22 where Berger explained that they could 23 discover no off-site migration of 24 contaminants and that a deep well</p>	<p>1 aquifer system, as shown by the 2 monitor well 1 contamination, 3 which is, quote, unquote, in the 4 wrong direction, you have a very 5 developed site with utilities, 6 maybe extraneous pumping sources. 7 You cannot as a geologist 8 always say the groundwater flow 9 direction -- even though it's 10 counterintuitive to this say, it 11 doesn't always work out that way. 12 So although -- 13 BY MS. HANE BUTT: 14 Q. Was any further study done 15 to sort of explain this what looks to be 16 like an anomaly? 17 A. No. 18 Q. Do you agree with the last 19 sentence in the e-mail? 20 MR. SHANNON: Calls for 21 expert opinion, lacks foundation. 22 THE WITNESS: The last 23 sentence, which says, "They are 24 doing some final work but are</p>

36 (Pages 138 to 141)

Page 310

1 -- you could look on Google Maps or
2 Zillow and get the address very easily.

3 Q. Do you happen to know if
4 there's a name associated with that
5 convenience store?

6 A. I believe, but I'm not
7 certain, it was Country Pride or -- I
8 think it had the word Country in it.

9 Q. Okay.

10 And then regarding the other
11 gas station, which I think you testified
12 was on Inman Avenue, do you happen to
13 know the address of that gas station?

14 A. I don't.

15 Q. What about any type of a
16 name associated with it, what brand
17 gasoline it sells?

18 A. I don't really have any
19 information on that.

20 Q. And are those the only two
21 other sites that you -- when you were
22 testifying earlier, you testified that
23 there were other sort of potential
24 sources that could have contributed to

Page 312

1 believe -- there's one other
2 entity that's mentioned as a part
3 of this litigation that I had
4 never heard of, so I guess that
5 would make a third, but I wasn't
6 aware of that in the past.

7 But those -- to answer your
8 question, prior to this
9 litigation, yes, it was the gas
10 station -- potential sources could
11 be that or the convenience store
12 right across the street.

13 BY MR. BRIGHT:

14 Q. Sun Bright, is that a gas
15 station?

16 A. I forget now where it came
17 up today in one of the documents that was
18 handed to me. I don't know what it is
19 and I wasn't aware of it until very
20 recently. It's in one of the exhibits,
21 but I'm -- I can't remember right now.

22 MR. BRIGHT: That's all I
23 have.

24 MR. BRIDE: I just have

Page 311

1 the potable well contamination on --
2 what's the road --

3 MR. SHANNON: Lake?

4 MR. BRIGHT: I'm sorry, no,
5 the other one.

6 MS. HANE BUTT: Lancaster?

7 MR. BRIGHT: Yes.

8 THE WITNESS: And
9 Morningside Drive?

10 MR. SHANNON: Misstates
11 testimony.

12 BY MR. BRIGHT:

13 Q. Are these the only two sites
14 that you were familiar with when you were
15 talking about other possible sources for
16 the contamination?

17 MR. SHANNON: Same
18 objection.

19 THE WITNESS: Those are the
20 two that I had preliminarily in
21 mind. Actually, as a part of this
22 litigation, this other entity that
23 was mentioned in some of the
24 documents, the Sun Bright, I

Page 313

1 probably two questions.

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. BRIDE:

6 Q. Mr. Lipsius, I represent Mr.
7 Melecci and Rob's Towing. I just want to
8 ask you a couple of questions again about
9 that convenience store.

10 You said that the owner of
11 the property and/or the -- whoever was
12 the tenant -- did not permit you people
13 to put a -- what you wanted to do was a
14 monitoring well; is that correct?

15 A. Temporary well point.

16 Q. And by temporary well point
17 would mean that that would just be in
18 there for a short period of time?

19 A. Correct.

20 Q. And NJDEP now and at that
21 time has the power to compel the -- to
22 compel a landlord or a property owner to
23 let you people on the property, don't
24 they?

Gary S. Lipsius

Page 317

CERTIFICATE

1

2

3

I HEREBY CERTIFY that the
witness was duly sworn by me and that the
deposition is a true record of the
testimony given by the witness.

It was not requested before
completion of the deposition that the
witness, GARY S. LIPSIUS, have the
opportunity to read and sign the
deposition transcript.

9

10

11

12

Kimberly A. Cahill

KIMBERLY A. CAHILL, a
Federally Approved Registered
Merit Reporter and Notary Public
Dated: August 20, 2012

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(The foregoing certification
of this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: Methyl Tertiary Butyl	Master File
Ether ("MTBE")	No. 1:00-1898
Products Liability Litigation	MDL 1358
	(SAS): M21-88

This Document Relates To:

New Jersey Department of Environmental
Protection, et al. v. Atlantic Richfield
Co., et al.
No. 08 Civ. 00312

— — —

September 11, 2012

— — —

Oral Rule 30(b)(6) videotape deposition
of Plaintiff New Jersey Department of Environmental
Protection, through its representative, AKSHAY R.
PARIKH, REGARDING HP DELTA, taken pursuant to notice,
was held at the offices of the STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State
Street, Trenton, New Jersey, beginning at 10:22 a.m.,
on the above date, before Margaret M. Reihl, RPR, CCR,
CRR, CLR and Notary Public for the State of New
Jersey.

GOLKOW TECHNOLOGIES, INC.
877.370.3377 ph|917.591.5672 fax
deps@golkow.com

Page 34

1 environmental concern?

2 A. Right, yeah.

3 Q. So then it's important then for the DEP to
4 determine the source of the contamination, correct?

5 A. That's right, yeah.

6 Q. And has that been done here?

7 MR. SHANNON: Calls for expert opinion.

8 THE WITNESS: That what I mention in my
9 just like previous answer -- question that when I got
10 the case in 2006, the first thing I referred this case
11 to our enforcement people as well as the underground
12 storage tank people. They did their investigation,
13 and our enforcement people at that time determine HP
14 Delta the source of contamination for private wells in
15 this area.

16 Q. Do you know whether DEP determined that the HP
17 Delta station was the sole source of impacts on
18 Lancaster Road?

19 MR. SHANNON: Object to the extent it
20 calls for expert opinion.

21 THE WITNESS: Based on the information
22 available at that time, they determined that they are
23 the only source of groundwater contamination or
24 private well contamination in this area.

25 BY MS. HANE BUTT:

Page 36

1 were talking about there are some other, like, gas
2 stations in this area, but I am not sure about they
3 are the source of contamination for this particular
4 private wells in this area.

5 BY MS. HANE BUTT:

6 Q. In the course of your responsibilities at DEP,
7 have you ever talked to anyone who questioned whether
8 HP Delta was the source of the impacts at Lancaster
9 Road?

10 MR. SHANNON: Vague and ambiguous as
11 phrased.

12 THE WITNESS: I did not discuss with
13 anybody about the source of contamination because that
14 was not my expertise. That was just like --
15 enforcement people were doing about that one.

16 My responsibility was only to provide
17 alternate water supply to the people affected by
18 groundwater contamination.

19 BY MS. HANE BUTT:

20 Q. I understand it wasn't your job to talk about
21 source, but were you involved in meetings at which
22 others expressed skepticism about whether HP Delta was
23 the sole source of impacts to Lancaster Road?

24 A. No, no.

25 Q. Do you know why then when I deposed

Page 35

1 Q. And when you just said "at that time," what
2 did you mean?

3 A. I'm talking about between 2000 -- in July of
4 2006 and August of 2006, when they should have
5 contacted HP Delta for the contamination in this area.

6 Q. And do you know whether that view changed over
7 time -- let me rephrase that question.

8 As we sit here today, does DEP consider HP
9 Delta the sole source of contamination at Lancaster
10 Road?

11 MR. SHANNON: Object to the extent it
12 calls for expert opinion.

13 THE WITNESS: Basically, since we
14 identified HP Delta as a source of contamination, my
15 understanding is or I am not aware of that the DEP is
16 doing any additional investigation to identify
17 additional sources of contamination in this area.

18 BY MS. HANE BUTT:

19 Q. They're not doing any additional source
20 investigation. Are you aware of any information to
21 suggest that there are potential other sources of
22 impacts to Lancaster Road?

23 MR. SHANNON: Same objection.

24 THE WITNESS: Just like during my
25 discussion with Gary Lipsius and Bill Buchanan, they

Page 37

1 Mr. Lipsius, he suggested that I ask you whether an
2 unknown source investigation would be appropriate for
3 this site?

4 MR. SHANNON: Lacks foundation.

5 THE WITNESS: Unknown source
6 investigation, that group is also working in our
7 bureau. I am working in the Bureau of Environmental
8 Measurement and Site Assessment. The site assessment
9 group is the -- are the people who are doing the
10 unknown source investigation.

11 BY MS. HANE BUTT:

12 Q. So that's not your area?

13 A. That's in our bureau, but that's not my area.

14 Q. Whose area is it?

15 A. We are under same bureau chief and that --

16 Q. Who would have that responsibility?

17 A. You're talking about the responsibility --

18 Q. For unknown source investigations.

19 A. When -- I think what happens, whenever there
20 is a groundwater contamination, like private well

21 contamination at that time, if that is unknown source
22 or if they could not identify the source of

23 contamination, automatically we are referring all

24 those files to unknown source investigation group, and

25 they are doing the source investigation for this --

<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: As I told you before, I</p> <p>2 was not involved in source determination for</p> <p>3 groundwater contamination on Lancaster Road, so I did</p> <p>4 not review any of that information.</p> <p>5 BY MS. HANE BUTT:</p> <p>6 Q. If the HP Delta site was not the source of the</p> <p>7 impacts at Lancaster Road, would it be appropriate for</p> <p>8 DEP to pursue those involved with the HP Delta site</p> <p>9 for those costs?</p> <p>10 MR. SHANNON: Calls for expert opinion,</p> <p>11 lacks foundation, beyond the scope for which this</p> <p>12 witness was prepared, calls for legal conclusion.</p> <p>13 THE WITNESS: Basically, if there are</p> <p>14 any costs involved, we are asking the responsible</p> <p>15 party to pay for that one, but if HP Delta was</p> <p>16 determined that they're not source of contamination,</p> <p>17 probably, yes, the department would not have asked</p> <p>18 them to reimburse the cost.</p> <p>19 But in this particular case, my</p> <p>20 understanding is the department has not yet -- they</p> <p>21 did not do any further investigation to identify other</p> <p>22 sources of contamination for private wells in this</p> <p>23 area.</p> <p>24 BY MS. HANE BUTT:</p> <p>25 Q. Have they conclusively determined that HP</p>	<p style="text-align: right;">Page 72</p> <p>1 A. I did not understand the question.</p> <p>2 Q. In your -- I mean, have you ever seen a</p> <p>3 situation where the DEP has revised its original</p> <p>4 determination as to responsible party status?</p> <p>5 A. Not to my knowledge.</p> <p>6 MR. SHANNON: Beyond the scope.</p> <p>7 THE WITNESS: Not to my knowledge.</p> <p>8 BY MS. HANE BUTT:</p> <p>9 Q. This memo was written in 2010. Between 2006</p> <p>10 and 2010, are you aware of any documents that would</p> <p>11 suggest that HP Delta is not the source of impacts to</p> <p>12 Lancaster Road?</p> <p>13 MR. SHANNON: Object to the extent it</p> <p>14 calls for expert opinion.</p> <p>15 THE WITNESS: I did not get any</p> <p>16 documents suggesting that HP Delta is not responsible</p> <p>17 for the contamination for this site.</p> <p>18 BY MS. HANE BUTT:</p> <p>19 Q. Do you know what the basis is for the</p> <p>20 department's conclusion that HP Delta is responsible</p> <p>21 for the Lancaster Road contamination?</p> <p>22 MR. SHANNON: Same objections.</p> <p>23 THE WITNESS: Can you repeat that</p> <p>24 question.</p> <p>25 MS. HANE BUTT: Yeah. Go ahead.</p>
<p style="text-align: right;">Page 71</p> <p>1 Delta is the source of impacts to the Lancaster Road</p> <p>2 site?</p> <p>3 MR. SHANNON: It's beyond the scope,</p> <p>4 calls for expert opinion.</p> <p>5 THE WITNESS: In 2006 that's what the</p> <p>6 department determined, that HP Delta is the source of</p> <p>7 contamination for.</p> <p>8 BY MS. HANE BUTT:</p> <p>9 Q. And is that a final decision?</p> <p>10 MR. SHANNON: Vague and ambiguous as</p> <p>11 phrased, asked and answered, calls for expert opinion.</p> <p>12 THE WITNESS: I believe so.</p> <p>13 BY MS. HANE BUTT:</p> <p>14 Q. If new information becomes available to the</p> <p>15 department to suggest that its original information</p> <p>16 was incorrect, would the department revisit that</p> <p>17 decision?</p> <p>18 MR. SHANNON: Incomplete hypothetical</p> <p>19 lacks foundation, object to the extent it calls for</p> <p>20 expert opinion.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MS. HANE BUTT:</p> <p>23 Q. And have you ever seen the DEP revise its</p> <p>24 original determination of who the responsible party</p> <p>25 is?</p>	<p style="text-align: right;">Page 73</p> <p>1 (The court reporter read back the</p> <p>2 record as requested.)</p> <p>3 THE WITNESS: Yeah, basically, when we</p> <p>4 determine HP Delta is responsible for the</p> <p>5 contamination in 2006, there were two main things,</p> <p>6 proximity of the site, HP Delta site, with respect to</p> <p>7 the private wells in that area. And the second thing</p> <p>8 is the type of contamination we found at HP Delta</p> <p>9 because the production room at HP Delta was</p> <p>10 contaminated with like 3,000 parts per billion of</p> <p>11 MTBE.</p> <p>12 So we found the same contamination in</p> <p>13 private wells at HP Delta and the same contamination</p> <p>14 we found at private wells in this area. The soil was</p> <p>15 grossly contaminated. There was free product in many</p> <p>16 of the observation wells on the site, so that's the</p> <p>17 reason -- and, also, I think the compliance visit</p> <p>18 conducted by Jonathan Berg's group, they found that</p> <p>19 there was violation history, just like spill or</p> <p>20 discharge at this location in the past, and there was</p> <p>21 no remedial actions taken at the site. So based on</p> <p>22 that one, I think the department or enforcement</p> <p>23 decided, determined that the HP Delta was the source</p> <p>24 of contamination of private wells in this area.</p> <p>25 Q. Is the HP Delta station the only retail</p>

Akshay R. Parikh

Page 120

1 C E R T I F I C A T I O N

2 I, MARGARET M. REIHL, a Registered
3 Professional Reporter, Certified Realtime Reporter,
4 Certified Shorthand Reporter, Certified LiveNote
5 Reporter and Notary Public, do hereby certify that the
6 foregoing is a true and accurate transcript of the
7 testimony as taken stenographically by and before me
8 at the time, place, and on the date hereinbefore set
9 forth.

10 I DO FURTHER CERTIFY that I am
11 neither a relative nor employee nor attorney nor
12 counsel of any of the parties to this action, and that
13 I am neither a relative nor employee of such attorney
14 or counsel, and that I am not financially interested
15 in the action.

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Margaret M. Reihl

Margaret M. Reihl, RPR, CRR, CLR
CSR #XI01497 Notary Public

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EXHIBIT 8

Anthony Brown

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: METHYL TERTIARY BUTYL
ETHER ("MTBE")

Master File
No. 1:00-1898
MDL 1358
(SAS): M21-88

This Document Relates to:

New Jersey Department of
Environmental Protection,
et al., v. Atlantic Richfield
Co., et al.
No. 08 Civ. 00312

TUESDAY, MAY 28, 2013

Videotaped Deposition of ANTHONY BROWN,
Expert Witness, Volume I, held at the Law Offices of
Latham & Watkins LLP, 650 Town Center Drive,
Twenty-First Floor, Costa Mesa, California, beginning
at 9:10 a.m., before Sandra Bunch VanderPol, FAPR,
RMR, CRR, CSR #3032

GOLKOW TECHNOLOGIES, INC.
877.370.3377 ph|917.591.5672 fax
Deps@golkow.com

Anthony Brown

Page 78	Page 80
<p>1 A. For Skyline, no. For Bakers Waldwick 2 for the MTBE, no. For Shell Ridgewood, we did 3 identify other sources of MTBE contamination. 4 Q. And those would be the NJDOT 5 maintenance yard and the two service stations? 6 A. Yes. The former Sunoco Service 7 Station, the Gulf Service Station, and also, I 8 believe, there was a documented release at the Joseph 9 Ferguson & Sons facility. 10 Q. Okay. 11 A. While we do not believe these 12 facilities contributed to the plume of MTBE to the 13 south of the Shell station, they are potential 14 contributing sources of MTBE. 15 Q. Sunoco -- 16 A. Excuse me. 17 Q. -- Bloomfield? 18 A. To the Twinney Well. 19 Q. To the Twinney Well? 20 A. Yes. 21 Q. Okay. 22 A. For the Sunoco Station, no, we did 23 not identify any other potential sources. 24 For the Exxon Livingston Station, no, we did 25 not identify any other contaminant sources for the</p>	<p>1 For the Five Points BP Deptford, we did 2 identify an Exxon Station immediately to the east of 3 the Five Points BP Station, but we did not believe 4 that station contributed to the observed 5 contamination beneath the Five Points BP and off-site 6 to the northwest. 7 Q. Okay. In your professional 8 experience, have you observed any tank removals at 9 service station facilities in New Jersey? 10 A. During my second visit to the 11 plaintiff-selected trial sites in March of 2013, I 12 did observe what appeared to be station upgrade 13 activities at the Exxon Livingston Station, where the 14 tanks had been exposed, the dispensers had been 15 removed, but I could not state for certain, based on 16 the field observations, where the new tanks were 17 being installed or whether it was simply upgrades to 18 the existing tanks. 19 Q. Were you provided with any soil or 20 groundwater sampling data taken in March of 2013 as a 21 result of activities at the Exxon Station? 22 MR. MILLER: Counsel, is this the material 23 that was produced last Thursday? 24 MR. STACK: In part. 25 MR. MILLER: I don't think it's appropriate</p>
Page 79	Page 81
<p>1 interpreted contaminant plume. 2 For HB Delta, we did not identified any -- 3 excuse me, identify any other sources. 4 For the Valero APCO Manalapan, we did not 5 identify any other sources of the observed 6 contamination. 7 For the Getty West Windsor Service Station, 8 we did identify two nearby service stations, a former 9 Exxon Mobil Service Station and a Gulf Service 10 Station. But we did not believe they contributed to 11 the observed contamination within the groundwater 12 plume as we interpreted it. 13 Q. In looking at the Getty Service 14 Station plume, in the area where MW-13 and MW-16 is 15 located, did you have any information to indicate 16 that there was a service station on that corner of 17 what was known as the Princeton Circle? 18 A. Not that I recall. 19 Q. Okay. 20 A. At the Maple Shade Citgo Station, we 21 did identify a service station immediately to the 22 southeast. The Citgo Station, I believe, is an 23 Exxon-branded station. We do not believe that that 24 site was the source of the observed contamination to 25 the southwest of the Maple Shade Citgo Station.</p>	<p>1 to ask this witness about the material produced that 2 late until they have had a chance to review it. And 3 I would suggest that you defer questioning about that 4 accordingly. 5 MR. STACK: I will -- 6 MR. MILLER: Because of the time in which it 7 was produced, on a holiday, and certain downloading 8 problems I won't bore you with now, the production 9 was not entirely timely. 10 MR. STACK: Well, I guess the feeling is 11 mutual, then. But we will proceed and -- I won't ask 12 questions of that right now. I will -- I will mark 13 those documents, and we will talk about them likely 14 later today. 15 MR. MILLER: Do you have a copy set for me? 16 MR. STACK: Of course we have a courtesy set 17 for counsel. 18 MR. MILLER: That would be appreciated. 19 MR. STACK: By all means. Absolutely. 20 So the record is clear, there were materials 21 produced to the defense counsel in response to 22 subpoena and -- pardon me, in response to deposition 23 notice and outstanding requests, and we are still 24 printing that material, which was produced to us late 25 last week, and on Friday, over the holiday weekend.</p>

21 (Pages 78 to 81)

CERTIFICATE OF REPORTER

I, SANDRA BUNCH VANDER POL, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: JUNE 10, 2013


SANDRA BUNCH VANDER POL, CSR #3032

EXHIBIT 9



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Water Compliance and Enforcement Element
Central Bureau of Water Compliance and Enforcement
PO BOX 407
Trenton, New Jersey 08625-0407
609-584-4200
Fax: 609-584-4220

LISA P. JACKSON
Commissioner

JON S. CORZINE
Governor

April 30, 2007

OCERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Melleci, Owner
Rob's Service Center
439 Lake Ave.
Colonia, NJ 07067

Harbans Singh, Operator 7003 3110 0003 5034 3621
HP Delta
439 Lake Ave.
Colonia, NJ 07067

Re: Administrative Order and
Notice of Civil Administrative Penalty Assessment
HP Delta
UST Registration # 001463
Woodbridge Township, Middlesex County

Dear Sirs:

There is enclosed for service upon you an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department pursuant to the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Notice is hereby given that HP Delta is entitled to request an administrative hearing. Any hearing request must include a copy of the cover letter and enforcement document for which a hearing is being requested, a complete Administrative Hearing Request Checklist and Tracking Form for Enforcement Documents (Tracking Form), with documentation and all information specified and must be delivered within twenty (20) calendar days after receipt by the Respondents of this Administrative Order and Notice of Civil Administrative Penalty Assessment to:



JON S. CORZINE
Governor

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Water Compliance and Enforcement Element
Central Bureau of Water Compliance and Enforcement
PO BOX 407
Trenton, New Jersey 08625-0407
609-584-4200
Fax: 609-584-4220

LISA P. JACKSON
Commissioner

IN THE MATTER OF : ADMINISTRATIVE ORDER
:
AND
HP DELTA :
:
NOTICE OF CIVIL ADMINISTRATIVE
WOODBIDGE TOWNSHIP :
:
PENALTY ASSESSMENT

This Administrative Order and Notice of Civil Administrative Penalty Assessment is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("the Department") by N.J.S.A. 13:1D-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Bureau Chief of Central Water Compliance and Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Robert Melecci owns a commercial gasoline station (Rob's Service Center, operating as HP Delta) located at 439 Lake Ave. in Colonia, NJ 07067.
2. Harbans Singh operates the commercial gasoline station (HP Delta) located at 439 Lake Ave. in Colonia, NJ 07067.
3. HP Delta maintains on-site, four-6,000 gallon unleaded and one-4,000 gallon unleaded gasoline underground storage tanks ("USTs") at the facility for dispensing and sale of gasoline. The tanks and their associated ancillary equipment are collectively defined as an "underground storage tank system" as defined by N.J.A.C. 7:14B-1.6.
4. Pursuant to N.J.A.C. 7:14B-1.6, gasoline is defined as a "Hazardous substance."
5. On August 8, 2006, Department representatives inspected HP Delta to determine compliance with the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. The inspection revealed the following:
 - a. The Owner or Operator shall provide overfill prevention equipment that shall:
 - 1) Automatically shut off flow into the tank when the tank is no more than 95 percent full;
 - 2) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

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NJDEP-SITE233-006496

Page 2 of 7

HP DELTA

ROB'S SERVICE CENTER

3) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

No method of overfill protection was provided for any of the tanks, in violation of N.J.A.C. 7:14B-4.1(a)3ii. Overfill, High Product, and Max Product alarms were recently noted in the alarm history of the Veeder Root automatic tank gauging system. Furthermore, the property owner, Robert Melecci, disclosed to Department representatives that he had witnessed the USTs being overfilled to the point where product would be ejected out the vent pipes. Staining of the pavement and dead grass around the vent pipes was observed during the inspection.

6. Based on the findings of the inspection a field Notice of Violation was issued to HP Delta. A Delivery Ban was implemented pursuant to N.J.A.C. 7:14B-1.8(a) which states that: No person or business firm shall introduce hazardous substances into an underground storage tank system which is known to be or suspected to be leaking or discharging hazardous substances except in accordance with N.J.A.C. 7:14B-8.1(a)2ii.

The Field Notice of Violation required HP Delta to empty the USTs within 48 hours as a result of obvious gross soil and groundwater contamination and possible off-site potable well contamination. Install and document functional overfill protection, and perform hydrostatic testing of all containment as soon as possible. Perform and submit a site investigation to determine the source of the release.

7. By August 9, 2006, all violations with exception of the site investigation returned to compliance.
8. On December 18, 2006, the Department received a site investigation from HP Delta. The Delivery Ban was then lifted on December 22, 2006. Subsequently, the Bureau of Underground Storage Tanks, citing numerous deficiencies in the site investigation report has issued a Notice of Rejection letter to HP Delta.
9. Based on the facts set forth in these FINDINGS, the Department has determined that HP Delta has violated the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:14B-1 et seq.

ORDER

10. HP Delta shall immediately comply with the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:14B-1 et seq.
11. Obligations and penalties of this Administrative Order and Notice of Civil Administrative Penalty Assessment are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

NJDEP-SITE233-006497

Page 3 of 7
HP DELTA
ROB'S SERVICE CENTER

12. This Order shall be effective upon receipt.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

13. Pursuant to N.J.S.A. 58:10A-32, N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.1 et seq., and based upon the above FINDINGS, the Department has determined that a civil administrative penalty should be assessed against HP Delta in the amount of \$20,000.00. The Department's rationale for this civil administrative penalty is set forth in Appendix A, which is attached hereto and incorporated herein.
14. Payment of the penalty is due when a final order is issued by the Commissioner subsequent to a hearing if any, or when this Notice of Civil Administrative Penalty Assessment becomes a final order (see following paragraph). Payment shall be made by certified or cashier's check payable to "Treasurer, State of New Jersey" and shall be submitted along with the bottom portion of the attached enforcement invoice to:

Division of Revenue
New Jersey Department of Treasury
P. O. Box - 417
Trenton, New Jersey 08625-0417

15. If no request for a hearing is received within twenty (20) calendar days after receipt of this Notice of Civil Administrative Penalty Assessment by HP Delta, it shall become a final order upon the twenty-first calendar day following its receipt by HP Delta, and the penalty shall be due and payable.
16. Notice is given that pursuant to N.J.S.A. 58:10A-32 and N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.13, the Department may, in addition to any civil administrative penalty assessed, amend such penalty assessment to include a civil administrative penalty for the economic benefit (in dollars) which a violator has realized as a result of not complying, or by delaying compliance, with this Act.

NOTICE OF RIGHT TO A HEARING

17. HP Delta is entitled to request an administrative hearing. HP Delta shall, pursuant to N.J.A.C. 7:14-8.4(a) in its request for a hearing, furnish the Department with all of the information specified in the enclosed Administrative Hearing request Checklist and Tracking Form. This information must be delivered to the office of legal Affairs at the address referenced in the cover letter to this document within (20) calendar days from receipt of this Administrative Order and Notice of Civil Administrative Penalty Assessment. A copy of the hearing request shall be filed at the same time to the address referenced in paragraph 19 below.

Page 5 of 7
HP DELTA
ROB'S SERVICE CENTER

23. Notice is further given that pursuant to N.J.S.A. 58:10A-10f, any person who purposely, knowingly or recklessly violates N.J.S.A. 58:10A-1 et seq., including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or by both. Any person who negligently violates N.J.S.A. 58:10A-1 et seq., including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a discharge monitoring report, or any portion thereof, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or by both.

DATE:

April 30, 2007

Charles L. Maack

Charles L. Maack, Bureau Chief
Central Bureau of Water Compliance and
Enforcement

EXHIBIT 10



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X)	Master File No. 1:00-1898
IN RE: METHYL TERTIARY BUTYL ETHER)	MDL No. 1358 (SAS)
PRODUCTS LIABILITY LITIGATION)	
-----)	
This document pertains to:)	
)	
<i>New Jersey Dep't of Env'tl. Prot., et al. v.</i>)	
<i>Atlantic Richfield Co., et al., No. 08 Civ. 312</i>)	
----- X		

**DEFENDANT GETTY PROPERTIES CORP.'S ANSWERS AND
OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS**

Defendant, Getty Properties Corp., by and through its attorneys, Rawle & Henderson, LLP, and pursuant to the Federal Rules of Civil Procedure and Local Rules of the Southern District of New York, hereby Objects and Responds to Plaintiffs' First Set of Requests for Admissions as follows:

PRELIMINARY STATEMENT

Prior to February 1, 1997, Getty Properties Corp. ("Getty Properties") was known as Getty Petroleum Corp. and before July 1985 known as Power Test Corp. Getty Properties has never refined crude oil, owned refineries or manufactured gasoline. Getty Properties has never manufactured pure or neat MTBE.

In 1997, Getty Properties spun-off its petroleum marketing distribution business, and transferred (among other assets) all business and financial records pertaining thereto, to Defendant Getty Petroleum Marketing Inc. ("GPMI"). GPMI is independent of and not affiliated with Getty Properties. GPMI, and not Getty Properties, is the owner of and has legal possession of all records, to the extent they exist, pertaining to the ownership, operation, leasing and/or supply of petroleum product for certain properties. Further, as a result of the spin-off

3. Admit that YOU, through one or more distributors, supplied gasoline product containing MTBE to Rob's Service Station (now known as HP Delta), located at 439 Lake Avenue, Woodbridge, New Jersey, from between 1983 to 1987.

RESPONSE: Denied as to the time period 1983 to 1985. Power Test Corp. (n/k/a Getty Properties) acquired certain "Getty" northeast petroleum marketing assets and the "Getty" trademark from Texaco Refining and Marketing Inc. in February 1985. A contract dealer agreement with owner Robert Melecci was included in that acquisition. Therefore, Getty Properties had a contract dealer agreement with Mr. Melecci from February 1, 1985 until June 1987. As to that time period, Getty Properties can neither admit nor deny this Request as after reasonable inquiry the information known or readily available is insufficient to enable Getty Properties to admit or deny this Request.

4. Admit that YOU, through one or more distributors, supplied gasoline product containing MTBE to the Station (now known as HP Delta) located at 439 Lake Avenue, Woodbridge, New Jersey, from between 1979 to 1983.

RESPONSE: Denied. Getty Properties did not have any connection to or business relationship with the referenced station from 1979 to 1985.

5. Admit that YOU had a branding agreement with Robert Melecci, owner of Rob's Service Station, located at 439 Lake Avenue, Woodbridge, New Jersey, from 1983 to 1987.

RESPONSE: Objection. Getty Properties incorporates its General Objections and Limitations by reference and further denies this request as it objects to the term "branding

broad. Without waiving said objections, admitted. Getty Properties did not have any connection to or business relationship with the referenced property from 1979 to 1985.

13. Admit that YOU owned the underground storage tanks that were removed in 1987 from Rob's Service Station (now known as HP Delta), located at 439 Lake Avenue, Woodbridge, New Jersey.

RESPONSE: Getty Properties admits that it owned the underground storage tanks at the referenced property from February 1, 1985 until their removal in June 1987.

14. Admit that a concentration of 41,900 ppb MTBE was detected at the HP Delta Station, located at 439 Lake Avenue; Woodbridge, New Jersey, on August 10, 2006.

RESPONSE: Denied. Getty Properties did not have any connection to or business relationship with the referenced property in 2006.

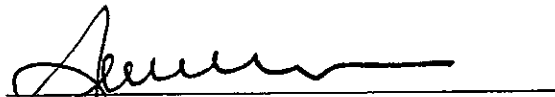
15. Admit that YOU have never provided any written warnings to any New Jersey station operators that gasoline products containing MTBE pose a greater risk of groundwater contamination than conventional gasoline that did not contain MTBE.

RESPONSE: Objection. Getty Properties incorporates its General Objections and Limitations by reference and further objects to this Request as it assumes facts not in evidence, assumes facts in dispute, assumes or implies a legal duty owned by Getty Properties, the statement "greater risk of groundwater contamination" is overly broad, vague and ambiguous. Further, the Request is overly broad in that it is not limited by a defined period of time. Without

waiving said objections, Getty Properties cannot respond to this Request in the form that it is written and therefore it is denied.

RAWLE & HENDERSON LLP

By:



John C. McMeekin II, Esquire (JM8956)

Susan M. Dean, Esquire

The Widener Building

One South Penn Square

Philadelphia, PA 19107

Phone: 215-575-4324 (Phone)

Fax: 215-563-2583 (Fax)

Attorneys for Defendant,
Getty Properties Corp.

Date:

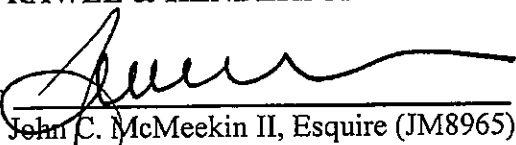
10/15/2012

CERTIFICATE OF SERVICE

I, Susan M. Dean, hereby certify that on this date, a true and correct copy of Defendant Getty Properties Corp.'s Answers and Objections to Plaintiffs' First Set of Requests for Admissions were served via LexisNexis File & Serve upon all counsel of record.

RAWLE & HENDERSON LLP

By



John C. McMeekin II, Esquire (JM8965)

Susan M. Dean, Esquire

The Widener Building

One South Penn Square

Philadelphia, PA 19107

Phone: 215-575-4324 (Phone)

Fax: 215-563-2583 (Fax)

Attorneys for Defendant,

Getty Properties Corp.

Dated: 10/15/2012

EXHIBIT 11

**EXPERT REPORT ON THE SOURCE AND AGE OF SUBSURFACE
GASOLINE CONTAMINATION AT THE DELTA GAS SERVICE
STATION SITE IN COLONIA, NEW JERSEY**

**H. P. DELTA, INC. v. ROBERT MELECCI and GETTY
PROPERTIES CORPORATION v. DHANDI TRANSPORT
DOCKET NO. MID-L-7781-07**

prepared for:

Stuart J. Lieberman, Esq.
Lieberman & Blecher
10 Jefferson Plaza
Princeton, New Jersey 08540

prepared by:

Gil Oudijk
Triassic Technology, Inc.
57 Hamilton Avenue
Hopewell, New Jersey 08525



December 14, 2010

EXPERT REPORT ON THE SOURCE AND AGE OF SUBSURFACE GASOLINE CONTAMINATION
AT THE DELTA GAS SERVICE STATION SITE IN COLONIA, NEW JERSEY
DECEMBER 15, 2010
PAGE 6

review of reconciliation records from between January 2 and July 26, 2006 did not reveal leakage.

Numerous residences exist to the south and east of the Delta Gas site. Until recently, many relied on potable wells for their water supply. Ground-water samples collected from 40 wells, in as early as May 2005, revealed methyl *tert*-butyl ether (MTBE) and benzene concentrations in excess of the State's ground-water quality standards³. MTBE is an additive used in gasoline since about 1980 and was present in leaded gasoline in the mid-1980s⁴. The furthest impacted well is about 1,300 feet to the southwest.

In 2008, the NJDEP installed a ground-water remediation system at the site. The system includes nine pumping wells, a filtration/treatment system and discharge into the sanitary-sewer system. Use of the system is on-going as of November 2010. The most recent sampling event showed that contaminant concentrations in ground water were significantly reduced and cleanup was close to complete.

Analysis of Chemical Data for 2006 NAPL Sample

The laboratory data sheets are in Attachment II and summarized on Tables 1 and 2. Neither lead alkyls nor MMT were detected in MIG's gasoline NAPL sample. Therefore, the gasoline in this sample was unleaded and most probably manufactured in or after the 1970s. Unleaded gasoline was not available prior to 1970, except for stations supplied by Standard Oil of Indiana (Amoco), who always sold an unleaded grade⁵. Because Amoco did not supply this station, the gasoline in this sample was discharged after 1970.

Getty introduced a regular-grade unleaded gasoline in 1974. Because Getty supplied the station, the gasoline in MIG's sample was probably released in or after 1974. Getty phased out their sales of leaded gasoline (both regular and premium grades) in 1984⁵.

1. Octane Rating of the Gasoline

Knowledge of the octane rating (such as regular versus premium) is helpful in assessing the age of gasoline. To assess the octane rating, an understanding of the magnitude of degradation or "weathering" is also needed.

Weathering through dissolution/water washing: To assess the magnitude of weathering and, predominantly dissolution, the ratio of the aromatics: benzene,

³ The May 2005 sampling event at 31 Morningside Drive revealed MTBE and benzene concentrations of 12,000 micrograms per litre ($\mu\text{g/l}$) and 45 $\mu\text{g/l}$, respectively. The magnitude of the concentrations indicates that contamination was on-going prior to May 2005 for a considerable time period.

⁴ Kramer, W. H. & Hayes, T. J. 1987. Water soluble phase of gasoline: Results of a laboratory mixing experiment. New Jersey Geological Survey Technical Memorandum 87-5.

⁵ Oudijk, G. 2010. The rise and fall of organometallic additives in automotive gasoline. *Environ. Forensics* 11 (1/2): 17-49.



EXHIBIT 12

Let's protect our world



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF HAZARDOUS WASTE MANAGEMENT

John J. Trele, Ph.D., Acting Director
401 East State St.
CN 028
Trenton, N.J. 08625
609-633-1408

WC-87
005-87

IN THE MATTER OF :
GETTY PETROLEUM CORPORATION :
125 JERICHO TURNPIKE :
JERICHO, NEW YORK 11753 :
ATTENTION: LEGAL DEPARTMENT :

ADMINISTRATIVE ORDER

This Administrative Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director for Enforcement of the Division of Hazardous Waste Management pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1) The Department has determined that Rob's Towing and Gas Center, hereinafter "Rob's Towing", is located at Lot 3, Block 506, 439 Lake Avenue, Woodbridge Township, Middlesex County, State of New Jersey.
- 2) On April 26, 1987, the Department received a complaint of a discharge of a hazardous pollutant (petroleum hydrocarbon) into the waters and/or onto the land of the State at Rob's Towing due to leaking underground storage tanks.
- 3) During an investigation conducted by Departmental personnel on July 2, 1987, it was determined that Getty Petroleum Corporation, hereinafter "Getty", is the owner of three underground storage tanks which were removed during this investigation. One tank which had been in use as late as the week of June 22, 1987, was observed to have at least six (6) holes and a strong odor of gasoline was noted in the excavated soil. Thereby confirming a discharge of a pollutant into the waters and/or onto the land of the State.

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GPC- HPDELTA -0014

Getty Petroleum
Page 2

- 4) On July 7, 1987, a Notice of Violation was issued to Getty for the discharge noted in paragraphs two (2) and three (3) herein. Remedial action to correct the violation was to be initiated immediately and completed by July 14, 1987.
- 5) Excavation of contaminated soil due to the leak in the tank began on July 2, 1987. However, on July 21, 1987, excavation was terminated for safety reasons. Prior to backfilling, soil samples were taken of the contaminated soil and of the sides and bottom of the excavation.
- 6) The above mentioned excavated soil was placed on top of plastic and then completely covered with plastic to preclude any further discharges of said pollutants into the waters or onto the lands of the State, while awaiting sample analysis and final disposal of the contaminated soil. The plastic covering is used as a temporary measure to store contaminated soil awaiting proper waste classification and proper and permanent disposal. Routine maintenance is necessary to insure that the cover remains in place.
- 7) In August 1987 it was observed that the plastic covering over the pile of contaminated soil had come off, therefore, leaving the contaminated soil uncovered. The potential then existed for pollutants to be discharged to the environment by means of rain water runoff to the waters and lands of the State and possible release of vapors to the environment. Based upon routine inspections it was determined that the contaminated soil was again properly covered on November 27, 1987 by the station owner, due to numerous public complaints.
- 8) By a letter dated September 16, 1987, the Department issued written instruction to Getty for proper and permanent disposal of the contaminated soil.
- 9) As of the date of this Order, Getty has not made any effort to remove and properly dispose of any contaminated soil or to forward all soil sampling results to the Department, verifying complete cleanup of the discharge.
- 10) Based on the facts set forth in these FINDINGS, the Department has determined that Getty has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT GETTY SHALL:


- 11) Within five (5) calendar days from receipt of this Administrative Order, submit to the Department all sampling results. This submittal shall be made to the following address:

Getty Petroleum
Page 5

23) Except as provided above in the Notice of a Right to a Hearing section, this Administrative Order shall be effective upon receipt.

Date:

12-15-87

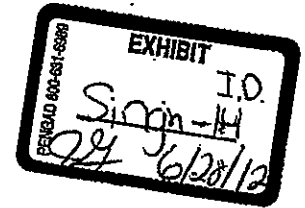


Ronald T. Corcoran
Assistant Director - Enforcement
Hazardous Waste Management

df

GPC- HPDELTA -0018

EXHIBIT 13



ANNUAL SITE UPDATE REPORT

HP Delta
439 Lake Avenue
Colonia, Middlesex County
New Jersey
ISRA Case No.: 86492

March 2010

Prepared for:

New Jersey Department of Environmental Protection
Bureau of Operation, Maintenance and Monitoring
PO Box 413
Trenton, NJ 08625

Attention: Jane Ten Eyck

Prepared by:

Vincent S. Barra
Senior Hydrogeologist
NJDEP License No. 423339

Reviewed by:

Greg J. Reuter
Senior Project Manager
NJDEP License No. 0012365

EXHIBIT 14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION, ET AL.,)
Plaintiffs,)
)
vs.) No. 08CIV.00312
)
ATLANTIC RICHFIELD, CO., ET AL.,) (SAS);MDL1358
Defendants.)

Marshall, Dennehey, Warner, Coleman & Goggin
200 Lake Drive East, Suite 300
Cherry Hill, New Jersey

Tuesday, August 1, 2012
10:10 a.m.

Videotape deposition before trial
of MEHAR SINGH, taken on behalf of the
Plaintiff Parties on the above date and time,
by and before Carol J. Angiolillo, Registered
Professional Reporter-Notary Public and
Certified LiveNote Reporter.

1 fuel into the ground.

2

3 BY MR. MOONEY:

4 Q. Okay. Describe for me the process
5 of pumping the gas going from the tanker truck
6 into the underground storage tanks. What
7 would you do to make that happen?

8 A. We stick the tank first, hook up
9 the vapor into ground tank to the tanker, hook
10 up -- grab, like, the fitting to the ground
11 tank.

12 Q. The fitting?

13 A. The fitting, yes.

14 Q. Okay.

15 A. The special fitting we keep in the
16 truck. We hook up with the ground tank. Then
17 we have plastic hose, like gasoline hose, 4
18 inch. We hook up the ground tank into our
19 tank and start dropping.

20 Q. Would you hook up the -- which
21 would you hook up first, the fitting to the --
22 to the underground storage tank?

23 A. Yes.

24 Q. Okay. And then you would hook that
25 up to the tanker truck?

1 A. Yeah.

2 Q. So, in all of these deliveries here
3 that are reflected on Dhandi Transport 2,
4 which are essentially 10 pages of deliveries,
5 there was never -- no gasoline was ever
6 spilled during that delivery?

7 A. Not with me.

8 Q. Not with you?

9 A. No.

10 Q. Okay. How about with any of your
11 other employees at Dhandi Transport?

12 A. Yes, one time.

13 Q. One time they spilled gasoline?

14 A. Yes.

15 Q. And do you know when that was?

16 A. No, I don't remember.

17 Q. And do you know how much gasoline
18 was spilled?

19 A. No, I don't remember.

20 Q. Do you know how it was spilled?

21 Do you know what went wrong in the
22 process?

23 A. No. Actually, I don't -- nothing,
24 I don't remember anything of this.

25 Q. Okay. And what was that -- and who

1 A. Yes.

2 Q. Would you ever do it the other way
3 around, hook it up to the tanker truck first?

4 A. It doesn't matter. We hook up both
5 sides and start dropping.

6 Q. Okay. When you started Dhandi
7 Transport delivering fuel -- well, actually,
8 let me get back -- I'll get back to that.
9 Strike that.

10 So, at the H.P. Delta station, when
11 you delivered this fuel, did any fuel ever
12 spill during your delivery?

13 A. No.

14 Q. So, in approximately 36 months --
15 well, how often would you deliver fuel to H.P.
16 Delta -- well, actually, it's reflected here,
17 right, on this custom report?

18 A. Yes.

19 Q. So, it looks like maybe every --

20 A. Every week I think.

21 Q. About every -- about once a week?

22 A. Yeah.

23 Q. Sometimes --

24 A. Sometimes two times, three.

25 Q. Sometimes two times a week?

1 was the -- who was the delivery person on that
2 day? Do you know who it was?

3 A. I don't remember.

4 Q. Was it one of your partners?

5 A. I don't remember.

6 Q. Did they come back and report to
7 you that they had spilled gasoline?

8 A. I don't remember. They might
9 remember. I don't remember what it was --
10 what happened was, nothing, I don't remember.

11 Q. Well, how did you find -- you said
12 there was at least -- there was one occasion
13 where gasoline was spilled.

14 How do you -- how do you know that?

15 A. Maybe somebody told me -- you know,
16 tell me, and that's why, you know. But I
17 don't remember, you know, who it was; how much
18 it was.

19 Q. And what type of -- did you -- when
20 you bought Dhandi Transport and began
21 delivering gas in 1996, did you take any --
22 get any training on the -- on the
23 transportation and delivery of gasoline?

24 A. Yes.

25 Q. And where did you get that

1 Q. In the letter that I showed you
2 just on Dhandi 5, it refers to a delivery on
3 January 17th, 2007 that your attorney at the
4 time acknowledged.
5 Where's the delivery report for
6 that -- for the deliveries in 2007?
7 A. P & J have maybe everything.
8 Q. Well, here it says that you
9 maintained the -- I mean, you certified with
10 your signature on page 16, this answer. And
11 it states that this delivery report was kept
12 by Dhandi Transport in the normal course of
13 business.
14 So, in 2008, you had the -- you had
15 documents regarding the spill -- regarding
16 deliveries at H.P. Delta.
17 A. I may ask P & J to give me that
18 report, a printer report from their computer.
19 But I don't remember. Maybe that's --
20 Q. But it doesn't say that. It says
21 that it was a report that you kept in the
22 normal course of business.
23 A. I don't remember, sir.
24 Q. Did you sell -- did you sell Dhandi
25 Transport, Incorporated?

1 closed Dhandi Transport and then started a new
2 company?
3 A. Yes.
4 Q. And then did that new company buy
5 Dhandi Transport?
6 A. What do you mean "buy"?
7 Q. Did they purchase?
8 A. We just transfer, you know, old
9 trucks into the Jersey Gasoline. The same
10 owner, me and my partner, Jorawar, we change
11 the company name to Jersey Gasoline.
12 Q. Okay. So, why did you change the
13 company to Jersey Gasoline?
14 A. The insurance things.
15 Q. Because of insurance?
16 A. Yes.
17 Q. Why because of insurance?
18 A. More expensive, and Dhandi
19 Transport have claims. And the -- we open the
20 new company and got the cheap insurance.
21 Q. So, you changed -- so, you
22 closed -- I just want to make sure I
23 understand this. Because you had insurance
24 claims against Dhandi Transport --
25 A. Right.

1 A. No.
2 Q. You did not sell it?
3 A. No.
4 Q. Who owns Dhandi Transport,
5 Incorporated right now?
6 A. Dhandi is closed.
7 Q. Can you turn to page 9 of that
8 document? It states in response to answer 8:
9 "Mr. Singh was the owner of Dhandi Transport,
10 Incorporated from 1996 to March 2007 when he
11 sold the company." And that's your certified
12 response.
13 So, can you please tell me who you
14 sold the company to in 2007?
15 A. Jersey Gasoline.
16 THE COURT REPORTER: I'm
17 sorry?
18 THE WITNESS: Jersey -- we
19 merged like -- Jersey Gasoline
20 Corporation. We merged to -- Dhandi
21 Transport closed and we, you know, opened
22 Jersey Gasoline Company.
23 -----
24 BY MR. MOONEY:
25 Q. So, Jersey Gasoline Company -- you

1 Q. -- you closed Dhandi Transport and
2 opened a new company?
3 A. Yes.
4 Q. In order to avoid higher insurance
5 payments?
6 A. Yes.
7 Q. And what were those insurance
8 claims against Dhandi Transport?
9 A. I remember accidents, a couple of
10 accidents. I don't know how many accidents
11 with cars, and insurance high.
12 Q. Were those accidents with the
13 trucks?
14 A. Yes.
15 Q. Where the trucks were in accidents?
16 A. The truck accidents, just claims.
17 Q. Were any of those insurance
18 companies have to do with the spill of
19 gasoline?
20 A. Pardon me?
21 Q. Did any of those insurance claims
22 have to do with Dhandi Transport spilling
23 gasoline during its deliveries?
24 A. That, I don't remember.
25 Q. You -- you -- you dissolved the

1 independent contractors?
 2 A. No.
 3 Q. Well, how did they dispense their
 4 product? How did P & J make deliveries to
 5 other stations?
 6 A. They'd use only one company to
 7 deliver their product.
 8 Q. They used a company to make
 9 deliveries?
 10 A. Yes.
 11 Q. And then the owners of P & J Fuel,
 12 are they also from India?
 13 A. Yes.
 14 Q. When you and your partner decided
 15 to go into business, did P & J Fuel stop using
 16 any other delivery company?
 17 A. No.
 18 Q. Well, didn't you tell us that P --
 19 that your company, Dhandi Transport, was the
 20 only company used by P & J Fuel for
 21 deliveries?
 22 A. Right.
 23 Q. So, were others then dropped by
 24 P & J Fuel so you could have the entire
 25 business?

1 A. No. They didn't have -- don't tell
 2 us don't do work for Bellomo Fuel. They never
 3 told us stop work for Bellomo. We start with
 4 Bellomo Fuel.
 5 Then they cut back our work, the
 6 Bellomo Fuel. You know, that's the way it is.
 7 Give us couple load, then one load. Sometimes
 8 a week it's one load. Then they start give us
 9 work.
 10 Q. So, you first started working for
 11 Bellomo Fuels?
 12 A. Yes.
 13 Q. And then began working for Dhandi?
 14 A. Yes.
 15 Q. I'm sorry. Then began working for
 16 P & J; is that right?
 17 A. Yes.
 18 Q. And you soon became the only
 19 delivery company for P & J; is that right?
 20 A. Yes.
 21 MR. BRIDE: That's all I've
 22 got.
 23 THE VIDEOGRAPHER: This
 24 concludes our video deposition. The time
 25 is 2:49. We're off the record.

1 -----
 2 (Video Deposition was
 3 concluded at 2:49 p.m.)
 4 -----
 5 MS. LAWRENCE-HAMMER: I'm
 6 going to want a transcript. This is
 7 Lesley Lawrence-Hammer.
 8 THE COURT REPORTER: Okay.
 9 You said you do want a transcript?
 10 MS. LAWRENCE-HAMMER: Yes, I
 11 do. And I would prefer to get an
 12 electronic copy if that's possible?
 13 THE COURT REPORTER: It's
 14 definitely possible. Anyone else?
 15 MS. WATSON: Yes. This is
 16 Susan Watson. I would like an electronic
 17 version as well.
 18
 19
 20
 21
 22
 23
 24
 25

1
 2 CERTIFICATION
 3 I HEREBY CERTIFY that the
 4 proceedings and evidence are contained
 5 fully and accurately in the stenographic
 6 notes taken by me upon the foregoing
 7 matter on Wednesday, August 1, 2012, and
 8 this is a correct transcript of same.
 9
 10 NOTARIAL SEAL
 11 Carol J. Angiolillo, Notary Public
 12 Upper Southampton Twp., Bucks County
 13 My commission expires February 19, 2013
 14
 15
 16
 17
 18
 19 CAROL J. ANGIOLILLO
 20
 21 NOTE: (The foregoing certification
 22 of this transcript does not apply to any
 23 reproduction of the same by any means unless
 24 under the direct control and/or supervision of
 25 the certifying reporter.)

EXHIBIT 15



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ION S. CORZINE
Governor

LISA P. JACKSON
Commissioner

Bureau of Underground Storage Tanks
401 East State Street
P.O. Box 433
Trenton, NJ 08625
Fax: (609) 633-1454

FEB 28 2007

Mr. Harbans Singh
HP Delta, Inc.
439 Lake Avenue
Colonia, NJ 07067

Re: Notice of Rejection of Site Investigation Report dated December 7, 2006
HP DELTA, INC.
439 LAKE AVE
COLONIA, WOODBRIDGE TWP, MIDDLESEX COUNTY
PI # 001463 - AAR050001
Case # 04-12-07-1319-21

Dear Mr. Singh:

On December 18, 2006, the Department received the above-referenced document from MIG Environmental, on behalf of HP Delta Inc., for review. The Department has determined that this document does not meet the minimum standards required for review and does not present sufficient sampling conducted at the site to qualify as a complete Site Investigation (SI) report. Please refer to the minimum standards set forth in the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, in the event that HP Delta, Inc. intends to submit a document that complies with those minimum standards. This letter does not represent an extension of any applicable schedules or deadlines. If HP Delta, Inc. intends to perform additional sampling in order to submit a revised Site Investigation / Remedial Investigation report, HP Delta, Inc. shall notify the Department within thirty (30) days after receipt of this correspondence.

The above report primarily focused on the attempt by HP Delta, Inc. to prove that the primary source of the free phase product and ground water contamination which is presently observed at the existing tank field wells and in the site potable well is a result of discharges to the subsurface from the former tank field which previously existed at the site until approximately 1987 (and not the existing tank field.) The site investigation work performed also in part addresses a 2004 incident (#04-12-07-1319-21) whereby a report was due to the Department to investigate whether a discharge had occurred from the turbine spill containment sump located at the 'Regular' gasoline tank which was found to be filled with gasoline product on December 7, 2004.

This is a short summary of the latest site conditions based upon the data included in the above listed report. Eight (8) boring locations were advanced throughout the site during

two different events, and notably few samples were taken at consistent depths or with a specific explanation as to why each location or depth was chosen. Methyl tertiary butyl ether (MTBE) was reported at 7.39 parts per million (ppm) in a shallow soil sample at 6.0 to 6.5 feet below grade surface (SB-1A) to the southeast of the new tank field, while benzene was reported at 24.9 ppm, total xylenes at 336.6 ppm and MTBE at 23.7 ppm at a sample SB-6B to the east of the existing potable well.

Additionally, a total of three (3) grab ground water samples were obtained on site, also during different events, listed with the labeling as TWP (Temporary Well Point). One point was located to south of the building (TWP-2), one to the south east of the building and in the vicinity of the potable well (TWP-6) and to the south east of the tank field (TWP-3). One ground water sample was also taken at a Tank Field Monitoring Well, although which well was not reported. The depth to ground water was also not reported for any of the three grab ground water samples. Note that the depth to ground water within the shallow tank field wells ranged from 6.42 feet to 7.125 feet below grade surface based upon the Department's gauging at the tank field wells during interim remedial activities at the site. The analytical results from the ground water samples collected on October 6, 2006 and indicated that benzene, toluene, ethyl-benzene and total xylenes (Total BTEX), MTBE and tertiary butyl alcohol (TBA) contaminants were discovered above the Ground Water Quality Standards (GWQS). At TWP-3, MTBE was reported at 242,000 parts per billion (ppb) and TBA was reported at 35,400 ppb. At one of the five tank field wells sampled on August 10, 2006 (labeled as Tank Field Well MW-4 whose location was not provided in the report), Total BTEX were discovered above the GWQS, along with MTBE at 41,900 ppb, TBA at 5,820 ppb and naphthalene at 696 ppb. In conclusion, these contaminant concentrations are consistent with a more recent discharge, such as a discharge due to the documented overfilling of the tanks and discharges from spill buckets and/or turbine spill containment sumps whose integrity was proven compromised.

Please note that the deficiencies in the site investigation performed to date are numerous and include, but are not limited to, the following primary items: 1) soil sampling and ground water sampling was not performed such that sample locations were biased to the area of greatest suspected contamination which HP Delta Inc. has suggested is the previous tank field. Please note that based upon research of the various maps of the site, and concurrence from the property owner, the previous tank field extended much further to the south, west and east well beyond the location of SB-6/TWP-6 and almost to and/or incorporating part of the existing tank field, which were areas where there were no samples reported obtained; 2) logs were not submitted as were required to be prepared for all soil samples to document subsurface conditions pursuant to N.J.A.C. 7:26E-3.6(a)c(2I); 3) sufficient soil samples were not collected to evaluate the existing tank field as outlined in N.J.A.C. 7:26E-3.9(a)3(I); 4) sufficient soil samples were not collected to evaluate the below grade product piping as outlined in N.J.A.C. 7:26E-3.9(a)4; 5) sufficient ground


water samples were not collected to evaluate the pump islands which are located further than 25 feet from the existing tank field area of concern as outlined in N.J.A.C. 7:26E-3.7(d)3; 6) the location of Tank Field Well MW-4 was not provided as outlined in N.J.A.C. 7:26E-3.13(c)8 which requires the inclusion in the site investigation report of any other data obtained pursuant to N.J.A.C. 7:26E-3.3 through 3.12; 7) the analytical data was not submitted as an electronic deliverable using the database format outlined in detail in the current HAZSITE application or appropriate spreadsheet format specified in the Department's Electronic Data Interchange Handbook in effect as of the date the report is prepared and 8) the appropriate certification for the report was not submitted pursuant to N.J.A.C. 7:26E-1.5(a).

Based upon a review of the data provided from the site investigation completed on behalf of HP Delta, Inc. in combination with fact that overflow protection was recently added to the tank field, field verification of the recent installation of new spill buckets and turbine spill containment sumps, and the fact that the site investigation into the area of the former tank field was totally inadequate, the Site Investigation Report, dated December 7, 2006, was inconclusive and insufficient for the Department to agree that the free phase product and ground water contamination found on site at this time was a result of discharges to the subsurface by the former tank field. In fact, and to the contrary, the current soil and ground water data seems to support that the existing tank field is most likely the source of the soil contamination, the free phase product within the tank field wells and the groundwater contamination in the subsurface at the points sampled. When evaluating the reports of overfilling events which have been observed at the vent pipes whose result is suspected discharges to the soil surrounding the tank field the vent pipes, the fact that the soil and ground water samples from a majority of the alternative sampling points surrounding the existing tank field were contaminated, and the nature of the actual free phase product being recovered on an interim basis from the tank field wells, it is quite clear that the existing tank field has most likely contributed to the contamination at this site. The Department also notes that a substantial soil and ground water sampling program is necessary to assess the full impact of the suspected discharges to the subsurface at this facility.

Since the successful completion of an appropriate site investigation has not been performed by the above addressed party and the addressed party has refused to enter into an Administrative Consent Order (ACO) pursuant to the Spill Compensation and Control Act authorities noted in N.J.A.C. 7:26C to perform the appropriate site investigation / remedial investigation, the Department will utilize public funds to conduct the proper site investigation, remedial investigation and remediation of the site at this time under the lead of the Bureau of Design & Construction.

If you require copies of Departmental Guidance Documents or applications, many of these are available on the internet at www.state.nj.us/dep/srp. If you have any questions regarding this review, please contact David N. Miele, Case Manager/Inspector at (609) 777-0900.

Sincerely,



Kevin F. Kratina, Chief
Bureau of Underground Storage Tanks

c: Middlesex County Department of Health
Municipal Clerk, Twp. of Woodbridge
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